S. HRG. 101-863

THE FAIR AIRPORT ACCESS ASSURANCE ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES AND BUSINESS RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1822

A BILL TO AMEND THE CLAYTON ACT TO PROHIBIT CERTAIN ACTIVITIES BY LOCAL GOVERNMENTS THAT OPERATE AIRPORTS, AND FOR CERTAIN OTHER PURPOSES

APRIL 24, 1990

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S. 1822—THE FAIR AIRPORT ACCESS ASSURANCE ACT OF 1989

TUESDAY, APRIL 24, 1990

U.S. Senate,
Subcommittee on Antitrust, Monopolies and Business Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard Metzenbaum (chairman of the subcommittee) presiding.

Present: Senators Metzenbaum, DeConcini, Simon, Kohl, Thurmond, Specter, and Grassley.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator **Metzenbaum**. The hearing will come to order.

Today, we will hear testimony about S. 1822, the Fair Airport Access Assurance Act of 1989. This legislation, introduced in Congress by Senator Breaux, would amend the Clayton Act to prevent local airports from imposing unfair and discriminatory fees on businesses that do not operate on airport facilities.

I would emphasize that this legislation relates to the airport's authority to impose fees on businesses that are not located on the airport. More than 80 airports now demand up to 15 percent of the gross revenue of companies located not on, but near the airport. More importantly, these fees are not imposed on all businesses, only car rental companies. They are not imposed on hotels, motels, parking lots, or other businesses that also send courtesy vans to the airport to pick up customers.

Airports have historically charged all on-airport car rental companies a percentage of receipts for the privilege of being located on the airport near to deplaning customers. Rental companies bid for the limited number of slots available on the airport by guaranteeing the airport a certain minimum level of revenue, which can be several million dollars a year.

I might say parenthetically that it is a rather unusual situation that the airports have seen fit to set a flat fee of 10 percent in most instances for rental car companies. I am not sure what the rationale for that is, whoever said it had to be 10 percent or whether it should be 4 percent or 8 percent or 12 percent or 20 percent.

In most instances, the bids in airports are based upon a competitive bid. You would think that there would be perhaps competitive bidding as to the percentage paid for the on-airport locations. That is not the case.

Now, the airports have begun to demand a percentage of the revenue generated by off-airport car rental companies because airports lost revenues as off-airport companies took business away from on-airport companies. Off-airport companies must pay these fees simply for the privilege of coming on the airport to pick up customers even though they do not have the same opportunities to attract new customers that on-airport companies enjoy.

I think these fees are unfair and anticompetitive, and I believe these fees, which can, as I previously stated, be as much as 15 percent of the revenue generated by the company, discriminate against small businesses that offer consumers a lower price. Consumers pay more for rental cars at airports that have imposed gross receipt fees.

Airports are generally protected from antitrust challenges under a judicially created immunity known as the State action doctrine. S. 1822 would prohibit municipally operated airports that receive Federal funds from imposing unreasonable or unjustly discriminatory fees where such fees would reduce competition or create a monopoly.

I believe the legislation has merit, but I have come today to listen. Notwithstanding the fact that I have indicated I believe it has merit, I have an open mind. I am concerned that off-airport businesses that have brought new competition into this industry should not be punished for their success.

[The prepared statement of Senator Metzenbaum follows:]

U.S. Senator Howard M.
METZENBAUM
of Ohio

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Judiciary
Labor and Human Resources
Energy and Natural Resources
Select Committee on Intelligence

Chairmanships:
Subcommittee on Antitrust
Subcommittee on Labor
Subcommittee on Energy
Regulation and Conservation

STATEMENT OF SENATOR HOWARD M. METZENBAUM
REGARDING AIRPORT ACCESS FEES
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS
COMMITTEE ON THE JUDICIARY
APRIL 24, 1990

TODAY WE WILL HEAR TESTIMONY ABOUT S. 1822, "THE FAIR AIRPORT ACCESS ASSURANCE ACT OF 1989." THIS LEGISLATION, INTRODUCED THIS CONGRESS BY SENATOR BREAUX, WOULD AMEND THE CLAYTON ACT TO PREVENT LOCAL AIRPORT AUTHORITIES FROM IMPOSING UNFAIR AND DISCRIMINATORY FEES ON BUSINESSES THAT DO NOT OPERATE ON AIRPORT FACILITIES.

I WOULD EMPHASIZE THAT THIS LEGISLATION RELATES TO THE AIRPORTS' AUTHORITY TO IMPOSE FEES ON BUSINESSES THAT ARE NOT LOCATED ON THE AIRPORT. MORE THAN EIGHTY AIRPORTS NOW DEMAND UP TO 15 PERCENT OF THE GROSS REVENUE OF COMPANIES LOCATED, NOT ON, BUT NEAR THE AIRPORT. MORE IMPORTANTLY, THESE FEES ARE NOT IMPOSED ON ALL BUSINESSES -- ONLY CAR RENTAL COMPANIES. THEY ARE NOT IMPOSED ON HOTELS, MOTELS, PARKING LOTS, OR OTHER BUSINESSES THAT ALSO SEND COURTESY VANS TO THE AIRPORT TO PICK UP CUSTOMERS.

AIRPORTS HAVE HISTORICALLY CHARGED ALL ON-AIRPORT CAR RENTAL COMPANIES A PERCENTAGE OF RECEIPTS FOR THE PRIVILEGE OF BEING LOCATED ON THE AIRPORT NEAREST TO DEPLANING CUSTOMERS. RENTAL COMPANIES BID FOR THE LIMITED NUMBER OF SLOTS AVAILABLE ON THE AIRPORT BY GUARANTEEING THE AIRPORT A CERTAIN MINIMUM LEVEL OF REVENUE -- WHICH CAN BE SEVERAL MILLION DOLLARS A YEAR.

OF COURSE, THIS BIDDING PROCESS FAVORED THE BIG COMPANIES. ACCORDING TO THE DEPARTMENT OF TRANSPORTATION, IN 1987, FOUR COMPANIES-- HERTZ, AVIS, NATIONAL AND BUDGET -- CONTROLLED 95 PERCENT OF ALL CAR RENTAL REVENUE GENERATED ON-AIRPORTS AND 73 PERCENT OF ALL RENTAL CAR REVENUES GENERATED NATIONWIDE.

IN THE PAST, THE FEDERAL GOVERNMENT HAS QUESTIONED WHETHER THERE WAS SUFFICIENT COMPETITION IN THE CAR RENTAL INDUSTRY. IN 1975, THE FEDERAL TRADE COMMISSION ACCUSED HERTZ, AVIS AND NATIONAL OF MAINTAINING A "HIGH CONCENTRATED, NON-COMPETITIVE MARKET STRUCTURE THROUGHOUT THE UNITED

STATES." THE FTC CONCLUDED THAT "AMERICAN CONSUMERS HAVE BEEN FORCED TO PAY SUBSTANTIALLY HIGHER PRICES FOR THE RENTAL OF PASSENGER AUTOMOBILES THAN THEY WOULD HAVE HAD TO PAY."

TO RESOLVE THE FTC'S CONCERNS, THE MAJORS AGREED TO STOP CERTAIN CONDUCT THAT HAD LIMITED THE ABILITY OF RENTAL COMPANIES LOCATED OFF THE AIRPORT TO COMPETE. IN PART BECAUSE OF THIS CONSENT, OFF-AIRPORT COMPANIES HAVE BEEN ABLE TO COMPETE AGAINST ON-AIRPORT COMPANIES FOR CUSTOMERS. AND CONSUMERS RESPONDED. OFF-AIRPORT COMPANIES APPEALED TO THE PRICE-CONSCIOUS CONSUMER WHO WAS WILLING TO TRADE SOME CONVENIENCE FOR A LOWER PRICE.

HOWEVER, THIS NEW COMPETITION DISRUPTED THE COZY RELATIONSHIP THAT THE ON-AIRPORT COMPANIES HAD ENJOYED WITH THE AIRPORTS. AIRPORTS LOST REVENUES AS OFF-AIRPORT COMPANIES TOOK BUSINESS AWAY FROM ON-AIRPORT COMPANIES. NOW AIRPORTS ARE ATTEMPTING TO RECAPTURE THOSE LOST REVENUES BY DEMANDING GROSS RECEIPTS FEES FROM OFF-AIRPORT COMPANIES IN EXCHANGE FOR THE PRIVILEGE OF COMING ON THE AIRPORT TO PICK UP CUSTOMERS.

I THINK THESE FEES ARE UNFAIR AND ANTICOMPETITIVE. I BELIEVE THESE FEES -- WHICH CAN BE AS MUCH AS 15 PERCENT OF THE REVENUE GENERATED BY THE COMPANY -- DISCRIMINATE AGAINST SMALL BUSINESSES TRYING TO OFFER CONSUMERS A LOWER PRICE. AND CONSUMERS PAY MORE FOR RENTAL CARS AT AIRPORTS THAT HAVE IMPOSED GROSS RECEIPTS FEES.

ALTHOUGH THESE FEES UNDOUBTEDLY AFFECT THE ABILITY OF OFF-AIRPORT FIRMS TO CONTINUE TO OFFER LOW PRICES TO CONSUMERS, THE AIRPORTS ARE GENERALLY PROTECTED FROM ANTITRUST CHALLENGE UNDER A JUDICIALLY-CREATED IMMUNITY KNOWN AS THE "STATE ACTION DOCTRINE." S. 1822 WOULD PROHIBIT MUNICIPALLY OPERATED AIRPORTS THAT RECEIVE FEDERAL FUNDS FROM IMPOSING UNREASONABLE OR UNJUSTLY DISCRIMINATORY FEES WHERE SUCH FEES WOULD REDUCE COMPETITION OR CREATE A MONOPOLY. I BELIEVE THIS LEGISLATION HAS MERIT. I HAVE COME TODAY TO LISTEN. I HAVE AN OPEN MIND, BUT I AM CONCERNED THAT OFF-AIRPORT BUSINESSES SHOULD NOT BE PUNISHED FOR THEIR SUCCESS.

Senator **Metzenbaum**. We have the author of the bill here, and Senator Ford, who has certainly much knowledge and expertise in this area by reason of his activities on the Commerce Committee and other activities in the area.

It is the customary procedure when you have two Senators to recognize the one who has the most seniority first, but in this instance Senator Ford has very graciously indicated that he was very comfortable with our introducing Senator Breaux first as the author of the bill.

But I see that my colleague, Senator Simon, is here, and before doing that, I wonder if Senator Simon has an opening statement.

OPENING STATEMENT OF SENATOR SIMON

Senator **Simon**. I have no formal opening statement. I am here to learn. We are starting to mark up the budget today, so I am not going to be able to stay for the hearing.

I do want to note that Kent George, the director of aviation in Moline, IL, is here from Quad City Airport, who is doing a very fine job there. I may not be here to hear his testimony, but we appreciate his being here.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much.

I might say parenthetically before we begin that probably no Member of the Senate has been closer to this kind of an issue than I. Having been in the rental car business myself, having had Avis Rent-A-Car operations at a host of locations throughout the country, and also having been in the airport parking business, the airport hotel business, I am not unfamiliar with the industry.

Notwithstanding that, I do want to make it clear that, unfortunately, I haven't been in any of those businesses for a good many years, and I say unfortunately because it is my understanding they have all done pretty well since then.

Senator Breaux, we are happy to hear from you, sir.

STATEMENT OF HON. JOHN BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator **Breaux**. Thank you very much, Mr. Chairman. Well, I rented a car once, so I guess I have sort of been in the business as well in a much smaller and less significant way.

I thank the committee for the opportunity to be with all of you. My plan today is to present a very clear, concise, reasonable, and rational description of the bill, which my good friend and colleague, Wendell Ford, will try and muddy up and confuse the issue.

Senator **Ford**. Just like eating Cajun food.

Senator **Breaux**. The bill that I have introduced, Mr. Chairman and Senator Simon, is really very simple; it is one page. It has a very short preamble, but the guts of the bill, I think, are very easy to understand. It is not complicated at all.

It is really a plea for justice, it is a plea to eliminate discrimination, not complicated at all. The bill simply says that it would be unlawful for an airport, in this case, or a governing body of a local community that runs an airport that receives Federal assistance, which gets the Federal handle on it, to impose unreasonable and unjustly discriminatory fees as a condition of using the airport. That is generally the guts of the bill.

It says that such an imposition would be unlawful if the effect of an unreasonable and unjustly discriminatory fee would be to lessen competition or to tend to create a monopoly. That is as simple as I can say it, to read back the bill to the committee.

We have had bills in previous Congresses which went far beyond this one. We have bills that are now pending in the House, for example, that really get into the whole question of how you run an airport—the right to transportation services, the right of access to courtesy vehicles, dealing with airport access fees, and enforcement provisions.

Our bill doesn't do any of that. Our bill simply says that it will be unlawful to unreasonably and unjustly discriminate against the users of the airport. Here is the problem: There are some airports, as a means of generating revenues which they must have—and I support that—that obviously charge for rental car companies to have access to the airport. There is nothing wrong with that. I strongly support that.

The problem comes when they unjustifiably discriminate and impose unreasonable charges. Here is the problem: I would argue that it is unjust and unreasonable and discriminatory for an airport to charge people who are not located on their premises, who do not have access to parking, who do not have the right to advertise on the airport to the customers as they disembark off of an airplane—it would be unreasonable and unjust to charge them the same amount that they charge a rental car service that is located on the airport facility that have their signs in the airport, that have access to parking facilities on the airport property.

But that is what is happening in many of our airports. The airport is charging the same fee to people who are located on the airport as to those companies that may be 1, 2, 3 miles away from the airport that do not have the privileges that those who are on the airport have.

I would argue that that is unreasonable and unjust discrimination. I would also argue that it tends to lessen competition, obviously, and I would also argue that it tends to create a monopoly. Those, I think, cannot be contradicted principles if we follow the facts that I have tried to lay out. The competitive effects of such discriminatory treatment cannot be contested right now. Therefore, this legislation is needed.

As a quasi-public body, an airport is not subject to the same antitrust laws as a private business. My legislation would simply give a person the right to come to court, and to allow a court to look at the facts and determine what is a reasonable fee.

Does my bill say that an airport cannot charge a gross receipt tax to someone who operates off the airport? Absolutely not. They can continue to charge a gross receipt fee to someone who is located 3 miles from the airport, but only as long as it is not unreasonable or does not unjustly discriminate.

Can they discriminate under the terms of my legislation? Yes, but they cannot unjustly or unreasonably discriminate. Now, we do not define "unjust or unreasonable discrimination" that is a matter for the courts. This legislation essentially gives those operators the right to a cause of action to come into court and say the way we are being treated unjustly and unreasonably discriminates against us and, additionally, it has the effect of lessening competition or tending to create a monopoly.

So I think, Mr. Chairman and Senator Simon, that this is a plea for justice, it is a plea for fairness. And I want you to know it is also a plea for those people who must pay the charges. They, too, are unjustly discriminated against. We have had contacts to the Congress of literally thousands of people—senior citizens, consumer interest groups, and individuals—who don't understand why they must pay the same fee to an airport, which they do when they rent the car, having to go 3 miles off-airport as they would if they rented a car on the airport.

Some people want the bargain, some people want the cheaper-priced vehicle because they need it and that is all they can afford. But what is happening in many cases now is preventing that.

So I would just summarize by saying that this is simply a plea for the elimination of discrimination. It is a plea for being reasonable, it is a plea for letting the courts decide what, in fact, is reasonable. That is a right that does exist today that would be granted by the passage and adoption of this legislation.

Thank you, Mr. Chairman.

[The prepared statement of Senator Breaux and text of S. 1822 follow:]

STATEMENT OF SENATOR BREAUX, HEARING ON S. 1822,
THE "FAIR AIRPORT ACCESS ASSURANCE ACT"
SUBCOMMITTEE ON ANTI-TRUST, MONOPOLIES AND BUSINESS RIGHTS,
SENATE COMMITTEE ON THE JUDICIARY
APRIL 24, 1990

MR. CHAIRMAN:

I AM DELIGHTED WITH YOUR QUICK RESPONSE IN THESE HEARINGS ON MY BILL, S. 1822, THE "FAIR AIRPORT ACCESS ASSURANCE ACT". I HAVE HERE ANOTHER MUCH NEEDED OPPORTUNITY TO MAKE MY CASE FOR SPONSORING THIS BILL. I AM PARTICULARLY PLEASED FOR THIS OPPORTUNITY, MR. CHAIRMAN.

I INTRODUCED S. 1822 BECAUSE I BELIEVE THAT CONSUMERS OF BUSINESS SERVICES BENEFIT WHEN THERE IS FAIR COMPETITION AMONG SERVICE PROVIDERS. I BELIEVE THAT SMALL BUSINESS, THE LITTLE GUY, CAN COMPETE WITH BIG BUSINESS FOR THE CONSUMER'S FAVOR, IF THE COMPETITION IS FAIR.

MR. CHAIRMAN, THERE IS INTENSE COMPETITION BETWEEN MAJOR ON-AIRPORT CAR RENTAL AND OFF-AIRPORT RENTAL OPERATIONS. THREE COMPANIES, HERTZ, AVIS, AND NATIONAL CAR RENTALS, HAVE ABOUT 85% OF THE ON-AIRPORT MARKET. SMALLER CAR RENTAL FRANCHISE COMPANIES ARE USUALLY IN THE FAST DEVELOPING OFF-AIRPORT CAR RENTAL MARKET. IN THIS MARKET, MR. CHAIRMAN, WE'RE TALKING ABOUT THRIFTY RENTAL INDEPENDENT DEALERS, ALAMO, DOLLAR, AMERICAN INTERNATIONAL, ENTERPRISE, CASEY CAR RENTALS, 3-C RENT-A-CAR IN COLUMBUS, OHIO, PAY-LESS RENTALS, UGLY DUCKLINGS, ACE RENTALS, AND SIMILAR OPERATIONS. MR. CHAIRMAN, I HAVE HERE LETTERS OF SUPPORT FOR MY BILL FROM THE CONSUMERS FEDERATION OF AMERICA, AND FROM AN AVIS LICENSEE IN SHREVEPORT, LOUISIANA.

IN 1987 OFF-AIRPORT RENTALS GENERATED 20 TO 25% OF REVENUES IN AN $8 BILLION MARKET. THIS IS A SIGNIFICANT SHARE OF A VERY COMPETITIVE INDUSTRY.

THE SMALL CAR RENTAL OPERATOR LOCATED "OFF-AIRPORT" OFFERS LESS EXPENSIVE RENTALS. THEY CATER TO THE FAMILY TRAVELLER, SENIOR CITIZEN, OR SMALL BUSINESS PERSON WHO IS LOOKING TO SAVE MONEY AND IS WILLING TO SACRIFICE SOME CONVENIENCE AND TIME. THESE CONSUMERS RARELY STOP AT THE MORE STRATEGICALLY LOCATED MAJOR CAR RENTAL COMPANY COUNTERS INSIDE AN AIRPORT.

THE BUDGET-CONSCIOUS CONSUMER HAS BEEN WILLING TO WALK TO A PICK-UP POINT SEVERAL HUNDRED FEET FROM THE BAGGAGE CLAIM AREA, TRAVEL ON A COURTESY VAN, SOMETIMES UP TO THREE MILES OR MORE FROM THE AIRPORT GROUNDS TO GET TO THE RENTAL CAR COMPANY, AND THEN PROBABLY WAIT IN LINE FOR THE RENTAL CAR.

NOW, MR. CHAIRMAN, AN ESCALATING NUMBER OF AIRPORTS ARE TAKING STEPS THAT COULD ELIMINATE THE BUDGET-CONSCIOUS CHOICE. THEY ARE DOING THIS BY LEVYING HIGH FEES ON SMALL OFF-AIRPORT COMPANIES. MANY OF THESE COMPANIES ARE CONCERNED THAT THESE FEES ARE INTENDED TO OFFSET THEIR PRICE ADVANTAGE.

THE AIRPORTS, THEY SAY, ARE CHARGING THEM EXCESSIVE AND

DISCRIMINATORY FEES SOLELY FOR THE PRIVILEGE OF DRIVING THEIR COURTESY VANS ON PUBLIC ROADWAYS TO PICK UP AND DISCHARGE THEIR CUSTOMERS. MR. CHAIRMAN, THESE DEALERS KNOW A REASONABLE FEE WHEN THEY SEE IT. THEY HAVE SEVERAL EXAMPLES OF FEES CONSIDERED REASONABLE:

- SALT LAKE CITY, UTAH: $.25 PER VAN TRIP FEE;
- ORLANDO, FLORIDA: $2.50 PER CONTRACT PLUS LANE FEES;
- FORT LAUDERDALE, FLORIDA $3.10 PER CONTRACT FEE;
- MINNEAPOLIS, MINNESOTA: $1.50 PER CONTRACT FEE;
- BOISE, IDAHO: $2.50 PER CONTRACT FEE;
- LAS VEGAS, NEVADA: $3.00 PER CONTRACT FEE, AND
- NORFOLK, VIRGINIA: $ .25 PER COURTESY VAN TRIP FEE.

THE FEES, MR. CHAIRMAN, THAT THESE COMPANIES WANT TO CHALLENGE AS ANTI-COMPETITIVE, ARE NOT BASED ON THE NUMBER OF TRIPS THEIR VANS MAKE TO THE AIRPORT, NOT ON THE NUMBER OF RENTAL CONTRACTS GENERATED BY AIRPORT BUSINESS, OR ANY OTHER MEASURE RELATED TO COSTS OR THE SERVICES RENDERED. THE FEES IN QUESTION ARE BASED ON A PERCENTAGE OF THE OFF-AIRPORT OPERATOR'S GROSS RECEIPTS -- THEY COME RIGHT "OFF THE TOP". IN WHAT ARE THIN PROFIT MARGIN OPERATIONS, THESE FEES ARE BETWEEN 8 AND 10 PERCENT AND HAVE BEEN AS HIGH AS 15 PERCENT.

SMALL BUSINESS PEOPLE ARE ASKING FOR REASONABLE AND JUST FEES. THEY ARE NOT TRYING TO AVOID PAYING FEES. ED CHANCE, WHO IS HERE TODAY FROM BATON ROUTE, LOUISIANA, IS A SMALL BUSINESSMAN FRANCHISEE OF THRIFTY CAR RENTALS. HE IS FAMILIAR WITH THE PROBLEMS FACED BY MANY OFF-AIRPORT COMPANIES ACROSS THE COUNTRY WHEN THESE EXCESSIVE FEES ARE IMPOSED, AND WILL DESCRIBE HOW THESE FEES HAVE HURT HIS BUSINESS.

THE AIRPORTS AND THE BIG RENTAL CAR COMPANIES SAY THESE FEES ARE FAIR. THEY ARE SOMETIMES SLIGHTLY LOWER THAN THOSE PAID BY ON-AIRPORT COMPANIES.

THE OFF-AIRPORT COMPANIES, MR. CHAIRMAN, SEE THE DIFFERENCE IN BENEFITS RECEIVED BY THE ON-AIRPORTS AS CONSIDERABLY MORE THAN SLIGHT. THE OFF-AIRPORTS OPERATORS DO NOT HAVE DIRECT ACCESS TO CUSTOMERS. "WALK-UP" CUSTOMERS MAKE UP A LARGE PERCENTAGE OF THE BUSINESS OF THE ON-AIRPORT COMPANIES. THIS BUSINESS IS SO IMPORTANT THAT THE BIG COMPANIES BID MILLIONS OF DOLLARS FOR THE RIGHT TO CONTROL COUNTER SPACE INSIDE AIRPORTS.

OFF-AIRPORT COMPANIES NOTE THEIR LACK OF ACCESS TO CONSPICUOUS ADVERTISING IN AIRPORTS, NO CLOSE-IN PARKING FACILITIES, AND THEIR HAVING TO COMPLY WITH OTHER RESTRICTIONS IMPOSED BY AIRPORTS. SOME AIRPORTS HAVE BARRED CUSTOMERS FROM THE COURTESY VAN IF THEY DID NOT HAVE A CAR RESERVATION BEFORE AIRPORT ARRIVAL.

RENTAL OPERATORS LIKE HOWARD DUNLAP, OF DOLLAR RENT-A-CAR, IN MONTROSE, COLORADO, WHO YOU WILL HEAR FROM TODAY, CAN'T GREET THEIR CUSTOMERS IN THEIR AIRPORT TERMINAL. IN

SOME SITUATIONS, MR. CHAIRMAN, AIRPORTS REQUIRE PAYMENT OF THE ACCESS FEE AS PART OF THE BASE PRICE OF THE RENTAL, WHETHER THE CUSTOMER ACTUALLY TRAVELLED ON THE COURTESY VAN, OR WAS PICKED UP BY A FRIEND OR RELATIVE AND DRIVEN TO THE CAR RENTAL COMPANY THE NEXT DAY!

SUCH IS THE POWER OF THE AIRPORTS. THERE ARE NO RULES OF FAIR PLAY. BECAUSE THE AIRPORTS ARE QUASI-GOVERNMENTAL ENTITIES, THEY ARE LEGAL MONOPOLIES WHICH ARE EXEMPT FROM THE ANTI-TRUST LAWS. AIRPORTS ENJOY ANTI-TRUST IMMUNITY.

MR. CHAIRMAN, WITHOUT FEAR OF PRICE-FIXING CHARGES, IF THEY CHOSE TO DO SO, AIRPORTS ARE FREE TO JOINT VENTURE WITH COMMERCIAL ENTERPRISES, AND TO MEET AND SUGGEST FEES FOR OFF-AIRPORT CAR RENTAL COMPANIES. FOR THIS REASON, THIS ISSUE IS AN ANTI-TRUST MATTER, APPROPRIATE FOR THE JUDICIARY COMMITTEE TO CONSIDER.

IN FACT, A STUDY BY THE DEPARTMENT OF TRANSPORTATION, RELEASED LAST YEAR, FOUND THAT EXCESSIVE AIRPORT FEES WILL "CHANGE THE COMPETITIVE RELATIONSHIP" BETWEEN ON- AND OFF-AIRPORT COMPANIES, AND THAT THEY WILL RESULT IN "HIGHER PRICES, LOWER PROFITS, OR REDUCED MARKET SHARE" FOR OFF-AIRPORT COMPANIES. THE DATA FROM THE STUDY ALSO SHOWS THAT BETWEEN ONE-THIRD AND ONE-QUARTER FEWER RENTAL FIRMS OPERATE AT AIRPORTS THAT CHARGE GROSS RECEIPTS FEES.

ANTI-TRUST PROBLEMS ARE NOT NEW TO THIS INDUSTRY. IN THE MID-1970s, THE FEDERAL TRADE COMMISSION TOOK ACTION AGAINST THE THREE MAJOR CAR RENTAL COMPANIES (HERTZ, AVIS AND

NATIONAL) FOR CONSPIRING TO ENGAGE IN ANTI-COMPETITIVE PRACTICES. THEY ENTERED INTO A CONSENT ORDER AGREEING TO CEASE AND DESIST ENGAGING IN SUCH PRACTICES. BUT, MR. CHAIRMAN, THE FEES PROBLEM RAISED HERE TODAY MAY VERY WELL ADVANCE THE SAME ANTI-COMPETITIVE INTERESTS THAT THE CONSENT ORDER WAS SUPPOSE TO HALT.

IT IS CLEAR THAT WE NEED FEDERAL LEGISLATION, MR. CHAIRMAN. THE LAW SHOULD, BUT DOES NOT, PROVIDE THE OPPORTUNITY TO DEMONSTRATE THAT ONE EFFECT OF AN UNREASONABLE OR UNJUSTLY DISCRIMINATORY AIRPORT ACCESS FEE IS TO SUBSTANTIALLY LESSEN COMPETITION. OFF-AIRPORT COMPANIES HAVE TRIED TO ARGUE THEIR CASE IN THE COURTS FOR ALMOST A DECADE, BUT HAVE NOT BEEN ABLE TO ARGUE THE ANTI-TRUST ISSUE ON THE MERITS BECAUSE OF THE PROTECTED LEGAL STATUS OF THE AIRPORTS.

ADDITIONALLY, THE TRAVELLING CONSUMER MAY HAVE NO POLITICAL RIGHTS IN THE JURISDICTION WHERE THE AIRPORT CHARGING EXCESSIVE FEES IS LOCATED. THIS IS A PROBLEM THAT CANNOT BE SOLVED AT THE LOCAL LEVEL.

MY BILL IS VERY NARROWLY DRAWN TO AMEND THE ANTI-TRUST LAWS, TO MAKE IT UNLAWFUL FOR AIRPORTS TO "IMPOSE AN UNREASONABLE AND UNJUSTLY DISCRIMINATORY TAX, FEE, OR CONDITION" ON THE OFF-AIRPORT COMPANY, IF THE RESULT WOULD BE TO SUBSTANTIALLY LESSEN COMPETITION. THE EFFECT OF MY BILL WOULD BE TO ESTABLISH A STANDARD OF FAIRNESS, WHERE NO SUCH STANDARD CURRENTLY EXISTS.

THE LEGISLATION WOULD NOT INTERFERE WITH THE ABILITY OF

AIRPORTS TO RAISE NEEDED REVENUE, OR TO CHARGE REASONABLE AND FAIR FEES. ACCORDING TO THE DOT STUDY, EVEN IF AIRPORTS WERE PROHIBITED FROM CHARGING GROSS RECEIPTS FEES, THE MOST REVENUE THAT THEY WOULD LOSE WOULD BE 5 PERCENT IN THE SHORT-TERM BECAUSE THE LOSS WOULD BE MADE UP LATER. HOWEVER, I DO NOT BELIEVE THAT EVEN THIS SMALL LOSS WOULD OCCUR BECAUSE OFF-AIRPORT COMPANIES AGREE THAT THEY SHOULD BE CHARGED REASONABLE FEES AND AIRPORTS WOULD BE FREE TO CHARGE SUCH FEES UNDER MY BILL.

MR. CHAIRMAN, THE NATION'S AIRPORTS ARE CRUCIAL TO THIS COUNTRY'S ECONOMY AND THE WELL-BEING OF ITS CITIZENS. ACCORDINGLY, I HAVE SUPPORTED EVERY REASONABLE EFFORT TO ASSURE THAT THEY ARE ADEQUATELY FUNDED, AND GIVEN EVERY OPPORTUNITY TO GROW. HOWEVER, AIRPORTS ARE GOVERNMENTAL MONOPOLIES WHICH RECEIVE SUBSTANTIAL SUBSIDIES FROM THE FEDERAL GOVERNMENT, AND THEY SHOULD BE EXPECTED TO OPERATE ACCORDING TO BASIC RULES OF FAIR PLAY IN THE BUSINESS COMMUNITY. MY BILL WOULD SIMPLY REQUIRE THAT THEY DO THIS.

101st CONGRESS
1st Session

S. 1822

To amend the Clayton Act to prohibit certain activities by local governments that operate airports, and for certain other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31 (legislative day, SEPTEMBER 18), 1989

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Clayton Act to prohibit certain activities by local governments that operate airports, and for certain other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as "The Fair Airport Access Assurance Act".

SEC. 2. ANTITRUST LIABILITY OF LOCAL GOVERNMENTS.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by redesignating section 27, and any reference to such section, as section 28 and inserting after section 26 the following new section:

"SEC. 27. It shall be unlawful for any city, county, parish, town, township, village, or other general or special function governmental unit that owns or operates an airport that receives Federal assistance or issues airport improvement bonds the interest on which is tax exempt under the Internal Revenue Code of 1986 to impose an unreasonable and unjustly discriminatory tax, fee, or condition on non-tenant, non-aeronautical, commercial users of such airport, where the effect of such tax, fee, or condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce, whether or not such tax, fee, or condition is authorized by State law.".

SEC. 3. LIMITATION ON APPLICABILITY TO CIVIL ACTIONS.

This Act and amendments made by this Act shall not apply to any civil action in which a judgment has been entered on or before the date of the enactment of this Act.

○

Senator **Metzenbaum**. Thank you very much, Senator Breaux. I have no questions. Do you, Senator Simon?

Senator **Simon**. I do not.

Senator **Metzenbaum**. Senator Ford, we are very happy to welcome you. I think this is a special privilege. I don't recollect your having been before our committee before. We are happy to have you.

STATEMENT OF HON. WENDELL FORD, U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator **Ford**. I have always left the legal aspects to the lawyers, Mr. Chairman, and have tried to stay away from your committee, but find that since you are getting into the Commerce Committee's arena, particularly a subcommittee of which I am chairman, I feel like I ought to be here this morning.

Senator **Metzenbaum**. We are happy to have you.

Senator **Ford**. One thing that Senator Breaux and I—we may disagree on his piece of legislation, but we are not going to be disagreeable. His eloquence this morning has almost moved me to support it. I said almost.

Senator **Breaux**. Not quite.

Senator **Ford**. Not quite. [Laughter.]

Mr. Chairman, I appreciate your allowing me to testify this morning on S. 1822. Since I have the pleasure of serving as Chairman of the Aviation Subcommittee of the Commerce Committee, I have had the opportunity to review legislation similar to S. 1822 for the past 3 years.

Shortly after becoming chairman of the Aviation Subcommittee, I was drawn into the battle between the airport operators and the off-airport car rental firms. I was not familiar, Mr. Chairman, with the subject. So I suggested a meeting between the two interest groups in my office, and that was a mistake because Alamo brought so many lawyers I had to move to a conference room.

I did not realize that this was more than a simple disagreement. Reflecting back on that meeting, the only characterization that comes to mind is all-out war. Since I hail from the State of Henry Clay, I was determined to strike a compromise on this issue.

Throughout the summer, I held hearings, attended meetings, and my staff held numerous sessions on this subject. I did not take a position until I realized there was no hope of finding a middle ground.

I am here today to tell you that all the effort I put into this issue to find a compromise was wasted, and I determined that the airports should have the opportunity to manage the airports and to manage the financial situation as it related to the airports.

Mr. Chairman and Senators, I oppose S. 1822, as it amends the Clayton Act so as to threaten airport revenue and expose airport authorities to unnecessary and costly litigation.

There are four primary reasons, Mr. Chairman, why the Judiciary Committee, in my opinion, should reject S. 1822. First, airports must be able to raise needed revenues from companies which, whether located on or off the airport, utilize airport facilities for their business profits. As you know, all air carrier airports are not for-profit local and State governmental bodies which are directed by Federal law to institute fee structures sufficient to make the airport self-supporting. That is the law.

Second, such legislation is unnecessary since off-airport car rental companies already have a judicial remedy under the commerce clause if fees are truly unreasonable. What off-airport companies really object to is that the Federal courts in two cases, Mr. Chairman, have found gross receipt fees to be a reasonable means of charging such companies for the benefits they receive from the access to a pool of customers generated by the operation of the airport.

Third, proponents of S. 1822 claim they are being discriminated against because they are not located on the airport. I have found this claim to be faulty in that both on- and off-airport car rental companies derive the same benefit, which is direct access to arriving passengers.

And fourth, Mr. Chairman, S. 1822 is not a proconsumer bill, as its proponents claim. Without the fees from off-airport car rental companies, the burden of paying more airport operating costs would shift to the passengers, most of whom do not rent cars at all.

As a matter of simple equity, it should be expected that all businesses that depend on the airport should contribute meaningfully to support that airport. Off-airport car rental companies would not exist absent the presence of an economically healthy airport.

Mr. Chairman, I oppose this legislation so strongly, and if the Judiciary Committee decides to report this legislation, I will seek referral of this legislation to the Commerce Committee.

How do you run an airport, Mr. Chairman? Do we tell them how to run it when they put in a large amount of money from the local entity? We help with runways and aprons, but the rest of the money comes from local sources.

They talk about hotels and motels not being charged. You look at your room rent and you see that the local taxes are there for the airport in most cases, and therefore they have already paid their fee.

So it is how you run an airport and whether we interfere with that ability or we allow the local people, who are responsible for paying off the bond issues or loans to run their own operations. We will be interfering, and then they will point a finger at us and say you told us how to do it, and we go broke like we do in everything else. So I think it is one we ought to stay out of, Mr. Chairman, and not get into.

[The prepared statement of Senator Ford follows:]

STATEMENT OF SENATOR WENDELL FORD
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES & BUSINESS RIGHTS
APRIL 24, 1990

Mr. Chairman, I appreciate your allowing me to testify on S. 1822. Since I have the pleasure of serving as Chairman of the Aviation Subcommittee of the Commerce Committee, I have had the opportunity to review legislation similar to S. 1882 for the past three years.

Shortly after becoming Chairman of the Aviation Subcommittee, I was drawn into the battle between the airport operators and the off-airport car rental firms. I was not familiar with the subject, so I suggested a meeting between the two interest groups in my office. I did not realize that this was more than a simple disagreement. Reflecting back on that meeting, the only characterization that comes to mind is all-out war.

Since I hail from the state of Henry Clay, I was determined to strike a compromise on this issue. Throughout the summer, I held hearings, attended meetings, and my staff held numerous sessions on this subject. I did not take a position until I realized there was no hope of finding a middle ground. I am here today to tell you that all the effort I put into this issue to find a compromise was wasted and I determined that the airports should have the opportunity to manage and finance local airports.

I oppose S. 1822 as it amends the Clayton Act so as to threaten airport revenue and expose airport authorities to unnecessary and costly litigation. There are four primary reasons why the Judiciary Committee should reject S. 1822.

First, airports must be able to raise needed revenues from companies which, whether located on or off the airport, utilize airport facilities for their business profits. As you know, all air carrier airports are not-for-profit local and state governmental bodies which are directed by federal law to institute fee structures sufficient to make the airport self-supporting.

Second, such legislation is unnecessary, since off-airport car rental companies already have a judicial remedy under the Commerce Clause if fees are truly unreasonable. What off-airport companies really object to is that the federal courts have found gross receipt fees to be a reasonable means of charging such companies for the benefits they receive from the access to a pool of customers generated by the operation of the airport.

Third, proponents of S. 1822 claim that they are being discriminated against because they are not located on the airport. I have found this claim to be faulty in that both on and off-airport car rental companies derive the same benefit which is direct access to arriving passengers.

Fourth, S. 1822 is not a pro-consumer bill as its proponents claim. Without the fees from off-airport car rental companies, the burden of paying more airport operating costs would shift to the passenger most of whom do not rent cars at all.

As a matter of simply equity, it should be expected that all businesses that depend on the airport should contribute meaningfully to support that airport. Off-airport car rental companies would not exist absent the presence of an economically healthy airport.

I strongly oppose this legislation and if the Judiciary Committee decides to report this legislation, I will seek referral.

Senator METZENBAUM. I thank you very much for your comments, and I have no questions.

Senator Simon.

Senator SIMON. Just one general question, and my knowledge in this field is just paper thin. Right now, when you say an Avis or a Hertz or some kind of spot in an airport, do they not pay extra for that spot?

Senator FORD. Absolutely, absolutely.

Senator BREAUX. I would just comment, and you will have a group of experts who are involved in it and they can tell you. They do pay for that. The problem is that some airports are not distinguishing between those who are on-airport and those who are off-airport, charging them the same or very close to the same gross receipts fee in order to do business at the airport, and the argument is just that.

I mean, those who are on-airport get a lot more, and those who are off-airport, if they have to pay the same and not getting the same advantages, that tends to be unjustifiably and unreasonably discriminatory.

Senator FORD. I say to my good friend, once that the bid is made and they pay the additional fees, they are entitled to certain things by making that bid, and that is additional business.

In addition to that, whatever their gross receipts are, there is a percentage on both. So there are less gross receipts, maybe, from off-airport sites, and that percentage is there.

In one case in Louisiana, I think the circuit division has agreed that the gross receipts tax is proper, and one in Florida, also, as I recall. So there have been two Federal cases and both circuit courts have said this is a proper procedure.

Now, the only argument you could have from that is maybe the percentage, and the percentage is maybe somewhat different in various locations. They have the right to do that.

So I think, under the circumstances, what this bill asks for and what is allowed now, and the responsibilities of the airport board and your local community officials—it is adequate; leave it alone.

Senator BREAUX. Paul, I don't want to belabor it, but the problem here is that we have an antitrust exemption. Because the airports are quasi-public bodies, they do not have to follow the same rules and regulations and standards with regard to monopoly and monopolistic practices.

This legislation would say that they, too, because they deal with private businesses that affect literally hundreds of thousands and millions of citizens, have to follow the same antitrust rules when they allocate their charges, and that is all. We are not saying what is just. We are just saying they cannot be unreasonable and unjustifiably discriminatory, and then the court would decide what is and what isn't.

Senator METZENBAUM. I think, Senator Simon, part of your questions have seemed to indicate a question as to whether they are paying for that location. What they do, in the main, as I understand it, at least they did when I was in this business, is that you bid your guarantee and the highest guarantee would get the preferable location. Some are closer to the passengers.

In most instances, I don't think that they pay extra rent for the space itself, but I gather from my staff that in some instances there may be more now than when I was in that business. They didn't pay anything extra, the 10 percent included rent.

It is a fact that, as I recollect—and I don't know what it is today, but in most instances there was a flat fee, 10 percent. Most other concessions in the airports are not let on that basis. You bid whatever you want to bid if you own the newsstand or the insurance facility, and not always guarantees.

Senator Grassley, did you have an opening statement?

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. I don't have an opening statement, and I need to remind you I am not a member of the subcommittee, but the reason I came by—and I would like to say why I came by because I am only going to be here———

Senator METZENBAUM. You are always welcome even though not a member, Senator.

Senator GRASSLEY. I am only here for a little period of time because we start a Budget Committee markup today.

Senator METZENBAUM. That will be easy. [Laughter.]

Senator GRASSLEY. But it is to bring your attention to the fact that a person close to Iowa and to myself, Kent George, director of aviation at Quad City Airport, of the Quad City metropolitan area of Iowa and Illinois, is here; he is also, an acquaintance of Senator Simon.

And so I wanted to come by and bring his appearance to your attention and emphasize it, and I guess to merely say that I consider this a very complex issue. I haven't made up my mind, but I look forward to reviewing the record if the bill is reported to the full committee.

I do, though, think from a philosophical standpoint that we need to be careful about indirectly increasing tax burdens on local citizens. Too often we make decisions here in Washington that make it difficult for local managers to operate.

So those are things I am going to have in mind, Mr. Chairman.

Senator METZENBAUM. Thank you very much.

I have no further questions of the two Senators. We are very grateful to you and we are honored by your appearance this morning.

Senator FORD. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Our first panel is Mr. Nielson Bertholf, director of aviation, Sky Harbor International Airport, Phoenix; Kent George, director of aviation, Quad City Airport, Moline, IL; Mr. Mark Cooper, director of research, Consumer Federation of America, Washington, DC.

The Chair wishes to point out to the witnesses that staff, I believe, has indicated to you that we have a 5-minute rule and would appreciate your confining your remarks to that 5-minute time period.

Senator GRASSLEY. Could you have Mr. George go first, please?

Senator **Metzenbaum**. As an accommodation to the Senator from Iowa, we would be very happy to have Mr. George be the first witness.

Mr. **Bertholf**. Mr. Chairman and members of the subcommittee and Senator Grassley, the testimony is joint testimony between two parties and Mr. George goes second.

Senator **Metzenbaum**. I guess we can't do it, then.

Mr. Nielson Bertholf, we will be happy to hear from you first, sir.

STATEMENT OF A PANEL CONSISTING OF NEILSON BERTHOLF, DIRECTOR OF AVIATION, SKY HARBOR INTERNATIONAL AIRPORT, PHOENIX, AZ, AND KENT GEORGE, DIRECTOR OF AVIATION, QUAD CITY AIRPORT, MOLINE, IL, ACCOMPANIED BY ARTHUR P. BERG, CHIEF, OPINIONS AND APPEALS DIVISION, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ON BEHALF OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES AND THE AIRPORT OPERATORS COUNCIL INTERNATIONAL; AND MARK N. COOPER, DIRECTOR OF RESEARCH, CONSUMER FEDERATION OF AMERICA, WASHINGTON, DC

Mr. **Bertholf**. Mr. Chairman, thank you for the opportunity to testify today. We are here to express our adamant opposition to S. 1822, whose goal seems to be to give special treatment under our antitrust laws to a single category of private business, thereby exempting them from legitimate airport user fees.

Enactment of this legislation would threaten a major source of airport revenue at a time when these airports, along with the Federal Government and the entire aviation industry, are struggling to keep the Nation's airports functioning due to tremendous capacity and financial pressures.

The bill before this subcommittee is another in a long history of attempts to enrich the off-airport rental cars at the expense of those who ultimately bear the responsibility for financing airport operations, and that is the airport users, State and local governments, and the taxpayers. The proponents of this legislation—Alamo and Thrifty—receive direct and substantial benefits from doing business at the airports. Yet, they balk at paying for that benefit.

For over 8 years now, the issue of off-airport user fees has been thoroughly discussed, debated, and litigated. While S. 1822 differs somewhat in content from past legislative proposals, its objective is the same, to give the off-airport rental car operators a free or deeply discounted ride.

If Congress adopts this Alamo-Thrifty proposal, other airport users would have every reason to also seek to have Congress reduce or eliminate fees that they pay to airports. Should Congress become mired down in local business disputes airport managers must grapple with every day? We think the answer is no. The best public forum for the resolution of these disputes is before the local or public body that is responsible for managing the financing the airports.

In truth, what the off-airport rental car companies are seeking is the right to evade legitimate and necessary charges that other companies must pay toward total airport cost and funding needs.

If these profit-oriented businesses succeed in convincing Congress to restrict or prohibit airport charges on off-airport companies, their gain must come either at the expense of the other airport consumers or the local taxpayer. This, we feel, is hardly consumer protection.

In Phoenix we studied this issue for 18 months. The city council required a task force including off- and on-airport operations. This fee issue was heavily debated. We instituted a 7-percent fee without judicial challenge.

The disparity of fees—let me talk about that, versus benefits. In 1989, the off-airport rental cars paid us $11,000 on an estimated 26.4 million dollars' worth of business. The on-airport rental cars paid us $8.5 million based on 85 million dollars worth of business. After the fee was instituted in February 1990, the off-airport rental car companies paid us $160,000 based on 2.2 million dollars' worth of business. Alamo paid over $90,000 of that.

It is important to keep in mind that publicly owned airports do not collect fees for profit, and they work to make sure that all consumers or users pay their fair share of the costs of all the airport facilities.

We believe the traveling public deserves assurances that companies providing services at the airport will deliver the full product they advertise at the price they promise. Airports do not have the power to protect customers from deceptive business practices, such as bait-and-switch techniques or other gimmicks, as reported by Consumer Reports.

Since 1985, the highly respected consumer publication has conducted two surveys of thousands of car renters and consistently rated one of the off-airport rental car companies as worse than the overall consumer's satisfaction. This should give you cause to consider whether this issue truly centers around the concern for consumers or concerns for profit.

The courts have had the opportunity to address the many claims by off-airport companies. In every case, the Federal courts have ultimately upheld the right of local governments to impose a percentage of gross receipt user charges on off-airport rental car companies as a class of airport user. The U.S. Supreme Court has seen no need to review the issue.

We are concerned that S. 1822 would promote a flood of new and costly litigation as courts wrestle with a new standard of review. S. 1822 would also upset the carefully crafted balance between State and Federal interests that exists under present antitrust laws, including the local government antitrust action of 1984. It would remove the State action protection for public airports.

At this time, Mr. Chairman, I would like to turn to my colleague, Kent George.

Mr. GEORGE. Thank you very much. I would first like to thank Senators Simon and Grassley for the kind remarks.

From the earliest days of aviation, local governments have been left with the responsibility for developing, operating, and financing our country's commercial service airports. While the Federal Government has never regulated on- or off-airport car rental company user fees, Federal law does require airports to charge sufficient fees for the facilities and services provided to airport users to make the airports as self-supporting as possible.

Today, our Nation's airports are faced with tremendous funding challenges. A recent AOCI-AAAE survey concluded that airports need $10 billion annually over the next 5 years to finance new safety improvements, enhance airport security, and to help reduce delays for millions of air travelers.

Airports must retain their ability to raise critically needed revenues from companies that, whether they are located on or off airports, utilize airport facilities to make business profits.

Nearly all airports charge on-airport car rental companies and other concessionaires a fixed percentage of their gross receipts from business generated at the airport. The standard fee for this privilege is 10 percent of their gross revenue, which has been a longstanding and accepted practice over the past 30 years.

To ensure that competing businesses are treated fairly, airports classify firms into distinct classes of users with those firms that want to make the same business use of the airport and then charge them with similar fees.

How important are concession revenues as a source of airport financing? To say crucial would be an understatement. Both large and small airports are greatly dependent upon concession revenues for financing. As shown in our testimony, the amount of concession revenue in all cases exceeds that provided by the Federal aviation trust fund. Congress should not jeopardize these locally generated airport revenues by creating a huge new incentive for such firms to move off airport and enjoy a mandated free ride.

The projected future revenues from gross receipts fees generated on an airport are an integral part of the collateral utilized for revenue bonds issued by these airports. These bonds are a major source of funding, providing an average of $2 billion annually for capital improvements at U.S. airports.

If airports are prohibited from or restricted in charging fees to off-airport car rental companies, on-airport car rental companies will have a tremendous incentive to move off airport and, in the process, take with them the substantial revenues they generate.

The benefits car rental companies receive from operating on airport are simply not great enough to keep them as tenants if they can escape airport user fees simply by moving off airport while maintaining virtually the same access to airport customers.

It is important to remember that in addition to a percentage of gross receipts fee, on-airport companies also pay fixed rental for the terminal and other airport space they occupy. Also, as found in the DOT-FTC report, the difference in convenience of using on-airport firms and off-airport companies is decreasing rapidly. At 21 of the 27 large hub airports, on-airport car rental passengers, like off-airport car rental customers, had to be bused to the rental car lots.

Airports estimate that revenues collected by all car rental companies at 30 major U.S. airports exceeded $2.5 billion in 1989. On-airport companies realized about two-thirds of the total market, with the remaining one-third being captured by the off-airport companies.

But while on-airport companies paid airport fees totaling some $183 million, equaling about 10 percent of their income, off-airport car rental companies paid only $5.3 million, or less than 1 percent of their gross sales, to airports for access to the same customers.

If you were a competitor in this industry, would you choose to have your van deliver customers to an on-airport location or to an off-airport location that is often equally as convenient?

The rapid growth of the off-airport car rental companies has caused airports great concern because a significant amount of their car rental user fee revenue is being siphoned off by these large off-airport companies. Today, over 70 airports charge off-airport operators an average percentage gross fee of 8 percent, as compared to an average 10 percent gross fee for on-airport companies.

Despite claims to the contrary made by off-airport companies, there is no evidence of a drop in car rental demand at these airports imposing off-airport percentage fees. In fact, in a recent survey we found that new off-airport car rental companies have opened their doors for business at half of the airports currently charging an off-airport car rental gross receipts fee.

We believe, as the courts have reaffirmed time and time again, that a percentage of gross receipt charges on off-airport car rental companies is fair because it assesses similar charges to all consumers who rent cars. It directly reflects the volume of the business of the company, large or small, conducted at the airport.

While some corporate giants like Alamo and Thrifty would rather pay no fees or, at a minimum, fixed access fees per van, the percentage of gross receipts fee represents the direct relationship between business volume and fees paid.

Senator METZENBAUM. Summarize, please.

Mr. GEORGE. Yes, sir.

Airport managers, as representatives of local and State governments, spend much of their time and energy trying to balance the competing and conflicting interests of companies that would make use of the airport. At the same time, however, we must constantly strive to protect the interests of those who should be the main beneficiaries of the airport facilities and services; that is, the passengers and the communities we represent.

To put it simply, Mr. Chairman, if you and your colleagues support this legislation, airport users and taxpayers will have to pick up the tab left by those profitable companies seeking a free ride.

Thank you.

[The prepared statement of Mr. Bertholf and Mr. George follows:]

SENATOR DENNIS DECONCINI

QUESTIONS FOR NEILSON "DUTCH" BERTHOLF
DIRECTOR OF AVIATION
SKY HARBOR INTERNATIONAL AIRPORT

1. MR BERTHOLF, APART FROM THE QUESTION OF WHETHER THIS BILL REPRESENTS SOUND ANTITRUST POLICY, THE ARGUMENT HAS BEEN MADE THAT THIS BILL WOULD HAVE A CHILLING EFFECT ON ANY FORM OR PERCENTAGE OF OFF-AIRPORT FEES BECAUSE OF THE FEAR OF LITIGATION UNDER THIS NEW CAUSE OF ACTION. WOULD OFF-AIRPORT CAR RENTAL AGENCIES EFFECTIVELY BE IMMUNE FROM AIRPORT REGULATIONS UNDER THIS BILL?

2. I UNDERSTAND THAT PHOENIX RECENTLY ENACTED A SEVEN PERCENT OFF-AIRPORT RENTAL CAR FEE AFTER A YEAR LONG DEBATE. [THE NEW REVENUE IS INTENDED TO BE USED TO FURTHER DEVELOP SKY HARBOR AIRPORT INCLUDING BUILDING A THIRD RUNWAY AS WELL AS INTERNATIONAL FACILITIES.] DOES PHOENIX CHARGE THE SAME GROSS RECEIPT FEE ON OTHER OFF-AIRPORT BUSINESSES THAT OPERATE COURTESY VANS ON AIRPORT PUBLIC ROADWAYS (SUCH AS HOTELS, RESORTS, AND PARKING OPERATIONS) AS IT DOES ON THE OFF-AIRPORT CAR RENTAL COMPANIES? IF NOT, WHY NOT? SHOULDN'T THEY ALL CONTRIBUTE EQUALLY?

3. IT IS MY UNDERSTANDING THAT OFF-AIRPORT CAR RENTAL AGENCIES DO NOT OBJECT TO PAYING A FEE FOR THEIR USE OF AIRPORT ROADWAYS, BUT ONLY OBJECT TO PAYING A PERCENTAGE OF GROSS RECEIPTS. WHEN THE CITY OF PHOENIX DETERMINED THE FEE METHOD FOR SKY HARBOR, WERE THE OFF-AIRPORT CAR AGENCIES ABLE TO RECEIVE A FAIR HEARING ON THIS ISSUE? WHAT OTHER FEES METHODS DID YOU CONSIDER AND WHY WERE THEY REJECTED?

4. NOW THAT PHOENIX SKY HARBOR CHARGES THIS GROSS RECEIPT FEE TO OFF-AIRPORT CAR RENTAL AGENCIES, DO YOU EXPECT REQUESTS BY THOSE COMPANIES TO MOVE ON-AIRPORT? WOULD EITHER OF YOUR ORGANIZATIONS BE ABLE TO PROVIDE DATA FOR THE RECORD ON THE EFFECT THIS GROSS RECEIPT FEE IS HAVING ON THE SMALLER OFF-AIRPORT CAR RENTAL AGENCIES?

5. HOW ARE THE SMALLER OFF-AIRPORT CAR RENTAL AGENCIES HANDLING THE NEW GROSS RECEIPT FEES IN PHOENIX? HAS THE GROSS RECEIPT FEE FORCED ANY OF THEM OUT OF BUSINESS, THEREBY STIFLING COMPETITION?

QUESTION 1.

ANSWER: The proposed bill (S. 1822) prohibits imposition of an "unreasonable and unjustly discriminatory fee." This standard would invoke deleterious litigation that would require courts to perform the role of regulatory oversight of an airport's ratemaking and accounting. This standard is a substantial deviation from the judicially defined rational basis standard for local economic regulations which has guided courts and government officials for decades. The rational basis test currently prohibits fees that are arbitrary and capricious yet that standard recognizes an appropriate amount of discretion in local facility ratemaking management decisions. Although off-airport car rental companies would not be "immune" from airport "regulations" under the bill, the proposed language would subject numerous airports to a new wave of lawsuits seeking judicial review of their rate setting management decisions.

QUESTION 2.

ANSWER: The City of Phoenix is currently reviewing the fee structure for other off-airport businesses as directed by the City Council. Each category of business that operates courtesy vans will be considered on a case-by-case basis depending on how that user benefits from the business opportunities created by the operation of the airport.

In general, airports must have the ability to classify and regulate various categories of airport users in order to equitably allocate limited airport facilities and to raise revenues critical to financing airport development.

As the courts have clearly recognized, there is a distinct difference between off-airport car rental companies and off-airport hotels. Car rental companies which operate off airport but utilize airport facilities to pickup and discharge passengers derive substantially all of their business from the airport and, at the same time, directly compete with tenant car rental companies who must pay substantial charges for the right to do business at the airport. Hotel and motel courtesy vehicle operators, on the other hand, do not threaten existing airport revenues, and could operate without the benefit of courtesy vans. Additionally, off-airport car rental companies can move on to airport property, hotels cannot.

As the Eleventh Circuit Court of Appeals noted in Alamo Rent-A-Car v.Sarasota-Manatee Airport Authority, "the service is not an indispensable part of their business." The court also held that "the distinctions (between hotels/motels and car rental companies) the Authority has drawn are based upon its rational assessment of the relative benefits and the extent of use of each category of vehicles that enter the airport" and "the user fee schedule is well-tailored to achieve this objective."

Finally, in many jurisdictions, hotels, unlike car rental companies, already pay a substantial local tax on gross receipts. Through such local room taxes, hotels contribute heavily to the local tax base of the government entity that owns or operates the airport facility.

QUESTION 3.

ANSWER: The off-airport car agencies clearly received a fair hearing on the issue of airport user fees. The City of Phoenix studied this issue for over eighteen months and was aided in its efforts by a City Council-formed task force consisting of both off- and on-airport car rental company representatives. Listed below are the dates and opportunities that the off-airport car rental companies had available to them to put forth their views on the establishment of a fee based upon a percentage of annual gross receipts. This provided the affected companies ample opportunity to discuss their concerns in public.

8/18/88 - Phoenix Aviation Advisory Board Meeting

1/27/89 - Phoenix Aviation Advisory Board Meeting

4/12/89 - Phoenix Aviation Advisory Board - Business & Finance Subcommittee Meeting

5/10/89 - Off-Airport Car Rental User Fee Task Force Meeting

5/12/89 - Survey Questionnaire to Off-Airport Rental Car Companies

5/26/89 - City Council Status Report - Off-Airport Car Rental User Fee Task Force

6/21/89 - City Council Status Report - Off-Airport Car Rental User Fee

7/11/89 - Off-Airport Car Rental User Fee Task Force Meeting

10/10/89 - Off-Airport Car Rental User Fee Task Force Meeting

10/19/89 - Phoenix Aviation Advisory Board Meeting

12/13/89 - City Council Meeting

1/17/90 - Informational Meeting - New Fee Process

1/25/90 - City Council Report - Administration of Off-Airport Rental Car Companies

The other fee methods considered were a flat rate annually or a trip fee based on the number of times a courtesy van enters and exits the airport. These methods were not recommended since they do not equitably address the issue of the amount of business generated by the operation of the airport.

QUESTION 4.

ANSWER: The City of Phoenix is currently requesting bids for on-airport car rental services. Bids are due May 30, 1990. Until such time as bids are received and opened we will not know whether off-airport companies may wish to move on-airport.

The 1989 Department of Transportation (DOT) and Federal Trade Commission (FTC) report show that the car rental business is very competitive and that airport privilege fees have not led to a diminution of competition. Data from the American Airlines Sabre computer reservation system, which is used world-wide by travel agents to make airline and car rental reservations, shows that airports that levy fees on off-airport companies added proportionately more rental companies from November 1988 to January 1990 than did airports not levying fees.

This information corresponds with a 1990 survey conducted by the American Association of Airport Executives. The survey found that for the 72 airports that have implemented gross receipt percentage fees on off-airport rent car companies, almost 40 percent of those airports have new rental car companies accessing the airport market since implementation of the fee.

Percentage user fees are fair within the class of off-airport car rental firms since they are based on the volume of business the company conducts at the airport and thus do not discriminate against smaller rental car firms. Smaller businesses would face greater upfront fixed costs of doing business and would pay disproportionately more than their larger competitors if a non-percentage flat fee were charged. In fact, S. 1822, if adopted, could disadvantage smaller car rental firms and hinder new competitors from entering the market.

QUESTION 5.

ANSWER: At this time all permitted off-airport car rental companies are paying the seven percent fee. We are not aware of any company that has ceased airport operations as a result of the fee being imposed.

STATEMENT OF THE

AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

and the

AIRPORT OPERATORS COUNCIL INTERNATIONAL

on

S. 1822

Before the Senate Judiciary Subcommittee
on Antitrust, Monopolies and Business Rights

April 24, 1990

AAAE is the professional organization representing 1,800 airport executives who are responsible for the planning, management and operation of airports nationwide.

AOCI represents the local, regional and state governing bodies that own and operate the principal airports served by scheduled air carriers in the United States and throughout the world. AOCI's member airports enplane more than 90 percent of the total domestic and virtually all international scheduled airline passenger and cargo traffic in the United States.

JOINT TESTIMONY BY NEILSON BERTHOLF, A.A.E., DIRECTOR OF AVIATION FOR PHOENIX, ARIZONA, SKY HARBOR INTERNATIONAL AIRPORT AND KENT GEORGE, A.A.E., DIRECTOR OF AVIATION FOR THE QUAD CITY AIRPORT SERVING THE QUAD CITIES IN ILLINOIS AND IOWA, ACCOMPANIED BY ARTHUR P. BERG, CHIEF, OPINIONS AND APPEALS DIVISION, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ON BEHALF OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES (AAAE) AND THE AIRPORT OPERATORS COUNCIL INTERNATIONAL (AOCI) BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS

APRIL 24, 1990

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify today on behalf of the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE). The members we represent are the not-for-profit local and state governmental bodies, and the men and women who manage and operate our nation's airports.

We are here to express our adamant opposition to S. 1822, whose goal seems to be to give special treatment under our antitrust laws to a single category of private businesses, thereby exempting them from legitimate airport user fees.

Specifically, the bill would amend the Clayton Act to impose new antitrust liability on local and state government-owned and operated airports who charge and regulate the operation of off-airport rental car companies and others for the benefits they receive from doing business at airports. This legislation threatens a major source of airport revenue at a time when these airports, along with the Federal government and the entire aviation industry, are struggling just to keep the nation's airports functioning, due to tremendous capacity and financial pressures.

The bill before this subcommittee is another in a long history of attempts to enrich the off-airport car rental companies at the expense of those who ultimately bear the responsibility for financing airport operations -- the airport users, state and local governments, and the taxpayer. The proponents of this legislation, Alamo and Thrifty, receive direct and substantial benefits from doing business at the airports -- yet they balk at paying for that benefit.

For over eight years now, the issue of off-airport user fees has been thoroughly discussed, debated, and litigated. There is no reason the response to this initiative should be any different from that of the courts, state legislatures and other Congressional Committees that have considered the issue. They have found that airports should be permitted to charge gross receipts fees to off-airport rent-a-car companies. While S. 1822 differs somewhat in content from past legislative proposals, its object is the same: to give off-airport rent-a-car operators a free -- or deeply discounted -- ride.

If Congress adopts this Alamo/Thrifty proposal, other airport users would have every reason to also seek to have Congress reduce or eliminate the fees they pay to airports. Should Congress become mired down in local business disputes which airport managers must grapple with every day? The answer, we believe is no. The best public forum for resolution of these disputes is before the appropriate state or local public body that is responsible for the managing and financing of its public-use airports. Decisions by such local public bodies are reviewable in the courts, to ensure fairness to all parties.

Airports, as entities of state and local government, strive to provide quality and convenient services for the traveling public, and to foster competition that will promote competitive prices and offer passengers the widest possible range of service choices. Many airports have made great strides in providing facilities for additional on-airport car rental companies.

Today, it is very common to find five to eight car rental companies on-airport. The major factor that limits additional on-airport opportunities at airports is the amount of space available. Most car rental companies have the opportunity to compete for on-airport facilities, but some have evolved a corporate philosophy not to do so or to do so only in selective airport markets. They are entitled to that decision, but they are not entitled to a free ride when it comes to paying for the airport facilities that generate their customers.

In truth, what the off-airport car rental companies are seeking is the right to evade legitimate and necessary charges that other airport users must pay toward total airport costs and funding needs. If these profit-oriented businesses succeed in convincing Congress to restrict or prohibit airport charges on off-airport companies, their gain must come either at the expense of all other airport consumers or the local taxpayer. This is hardly consumer protection.

As an example, one air carrier airport (Columbus) in your home state, Mr. Chairman, reports that on-airport car rental companies pay approximately $1.8 million in gross receipts fees to the airport on $20 million in total annual rentals, while the off-airport operators paid the airport nothing on car rentals of $5 million. The local taxpayers of this community will be forced to subsidize to a greater extent the airport improvements if the airport is restricted from charging the off-airport car rental companies.

My experience at Phoenix Sky Harbor International Airport reflects this same disparity of fees paid versus benefits received by the off-airport car rental companies. For the entire calendar year of 1989, the off-airport car rental companies paid approximately $11,000 for airport access, although they made an estimated $26.4 million from airport business. On-airport companies paid $8.5 million based on $85 million in airport business. In order for the access fees to more accurately reflect the economic benefit derived by the off-airport car rental companies, we instituted a new 7% gross receipts fee. As a result, this past February, the off-airport car rental companies paid over $160,000 based on $2.2 million in business they did at the airport. We believe the new fee structure places all car rental companies doing business at Sky Harbor Airport on a more equal playing field.

The Phoenix experience underscores our earlier point that the proper forum to address off-airport user fees is at the local level. The City of Phoenix studied this issue for over eighteen months and was aided in its efforts by a City Council-formed task force consisting of both off- and on-airport car rental company representatives. That task force process provided an efficient yet exhaustive forum for user input into an equitable fee schedule for commercial access to Sky Harbor. Although--or, perhaps, because--the fee issue was heavily debated during the task force process, the 7% gross receipts fee for off-airport car rental companies was instituted without judicial challenge.

If airports are denied the opportunity to assess such off-airport fees, they will have no choice but to recover any lost revenue from either local taxpayers or the overwhelming majority of passengers who neither use off-airport rental cars nor benefit from the off-airport rental cars companies' alleged "lower prices." Airlines and other concessionaires who would be burdened with increased airport rental rates, fees and charges would inevitably pass these increased costs along to passengers through higher airline ticket and concession prices. The majority of passengers -- those who do not rent cars -- would thus subsidize the operations of off-airport car rental companies.

It is important to keep in mind that publicly owned airports, unlike shareholder owned rental car companies and their privately held franchisees, do not collect fees for a profit. Airports operate solely to provide the facilities the traveling public needs, and they work to make sure that all consumers or users pay their fair share of the cost of all of the airports' facilities.

Alamo and Thrifty claim that they will pass on to their customers any savings they receive from reduced airport user fees. Notwithstanding this claim, we are not convinced that they or other profit-oriented companies would pass along such savings to their customers rather than garner increased profits. Fundamental economic theory shows that prices in a competitive market are primarily set by supply and demand, not by costs.

Our skepticism has increased after learning of the results of a recent audit conducted in Tampa. During July 1989, the Hillsborough County Aviation Authority, owner of Tampa International Airport, entered into a "Off-Airport Rental Car Airport Use and Permit" agreement with ten firms. The agreement provided that the off-airport companies would pay 7 percent of their gross sales for the benefit of conducting business at the airport. Furthermore, due to the concerns of the smaller car rental companies, the authority agreed that the first $500,000 of annual gross receipts attributable to airport customers would be exempted from the user fee. This exemption was granted to all off-airport car rental companies, regardless of size.

The airport assumed that the exemption benefit would be passed on to the airport customers. However, following an audit of six of the off-airport car rental companies, including Alamo and Thrifty, it was learned by the auditor that the companies "charged those customers which (they) designated as airport customers for the privilege fee by including it on their rental contract as an additional charge but did not remit such fee to the Hillsborough County Aviation Authority." The estimated "windfall" for a one-month period was more than $70,000. Should all ten off-airport companies continue the policy of "pocketing" exempted user fees during the entire year rather than to pass the benefit on to their customers the potential annual windfall would be more than $325,000.

We believe the traveling public deserves assurances that companies providing services at airports will deliver the full product they advertise at the price they promise. While airports have some means to screen out inadequate or unscrupulous businesses and to regulate the business practices of on-airport tenant companies through contractual requirements, they have no such authority for consumer protection over off-airport companies. Nor do airports have the power to protect consumers who use these off-airport car rental service providers from deceptive business practices, such as "bait-and-switch" techniques or other gimmicks as reported by Consumer Reports. Since 1985, this highly respected consumer publication has conducted two surveys of thousands of car renters and consistently rated one of the largest off-airport car rental companies the worst in overall consumer satisfaction. This should give you cause to consider whether this issue truly centers around concern for consumers, or concern for profits.

The courts have had the opportunity to address the many claims made by off-airport companies -- equal protection, due process, commerce clause, antitrust, civil rights and various state law provisions. In every case, the federal courts have ultimately upheld the right of local governments to impose percentage of gross receipts user charges on off-airport car rental companies as a class of airport users. The courts have held that off-airport car rental companies directly benefit from the pool of customers provided by the airport and should therefore bear a portion of the costs to develop and maintain the entire airport facility, not just the roads their courtesy vans use. The U.S. Supreme Court has seen no need to review the issue. (A summary of the federal court decisions is attached)

We are concerned that S. 1822 would promote a flood of new and costly litigation as courts wrestle with a new standard of review. The "rational basis" test, under which courts have traditionally determined whether an airport had a legal basis for imposing a challenged fee has a well settled interpretation. The effort to impose a new test is simply an effort to change the rules of the game by the losing team. In short, they wish to prolong the contest by inspiring new litigation.

S. 1822 would also upset the carefully crafted balance between state and federal interests that exist under present antitrust law, including the Local Government Antitrust Act of 1984. It would remove the "state action" protection for public airports. Eliminating a local governmental entity's state action protection in order to benefit a single narrow interest group will only encourage other special interest groups to lobby Congress to carve out exceptions to the law for their particular benefit. Local governments are legitimately concerned with the prospect of their protection from antitrust liability being undermined so as to threaten their ability to operate public facilities. Likewise, the states are concerned that the bill would deny them their judicially affirmed power to convey to a local governmental entity the authority to carry out state policy without fear of antitrust liability.

From the earliest days of aviation, local governments have been left with the responsibility for developing, operating and financing our country's commercial service airports. As these not-for-profit airports developed, the sheer magnitude of the physical and fiscal effort of operations drove local governments to a logical sharing of funding responsibility with airlines and other vendors using the airport. While the federal government has never regulated on- or off-airport car rental company user fees, federal law does require airports to charge sufficient fees and rentals for the facilities and services provided to airport users to make the airport as self-supporting as possible. This is no easy feat.

Today, our nation's airports are faced with tremendous funding challenges. A recent AOCI/AAAE survey, concurred in by the Federal Aviation Administration, concludes that airports need $10 billion annually over the next five years to finance new safety improvements, enhance airport security and help reduce delays for millions of air travelers. Airports must retain their ability to raise critically-needed revenues from companies that -- whether they are located on or off the airport -- utilize airport facilities to make business profits. This is especially true of rental car businesses, which depend almost entirely upon the airport for their existence.

Nearly all airports charge on-airport car rental companies and other concessionaires a fixed percentage of their gross receipts from business generated at the airport. The standard fee for this privilege is 10 percent of their gross receipts, which has been a long-standing and accepted practice for over 30 years. To ensure that competing businesses are treated fairly, airports classify firms into a distinct class of users with those firms that want to make the same business use of the airport and they charge them similar fees.

How important is concession revenue as a source of airport financing? To say "crucial" would be an understatement. Both large and small airports are greatly dependent upon concession revenue for financing. The following table displays the average source and use of airport revenues by airport size. As shown by the table, the amount of concession revenue in all cases exceeded that provided by the federal aviation trust fund Airport Improvement Program (AIP). In fact, at most of the large and medium hub airports, the revenues received solely from the on-airport car rental concessionaires equaled or exceeded the federal AIP money received. Congress should not jeopardize these locally generated airport revenues by creating a huge new incentive for such firms to move off-airport into a federally-mandated free ride zone.

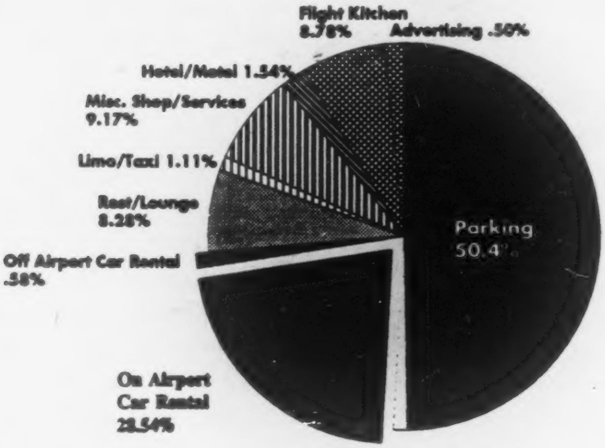
AVERAGE SOURCES AND USES OF REVENUE BY AIRPORT TYPE

	Revenue Sources								Use of Funds		
	Concessions	Air Carrier	Cargo Fees	FBO	General Aviation	AIP Grants	Other	Total	Operation/ Maintenance	Capital Improvement	Total
Large Hubs	39.5%	39.6%	0.9%	0.6%	1.3%	8.6%	9.6%	100%	51.3%	48.7%	100%
Medium Hubs	34.4%	31.0%	1.3%	1.6%	2.4%	18.3%	11.0%	100%	36.8%	63.2%	100%
Small Hubs	36.6%	15.6%	1.2%	2.8%	5.1%	32.1%	6.7%	100%	48.9%	51.1%	100%

The projected future revenues from gross receipt fees generated through airport business are an integral part of the collateral utilized for revenue bonds issued by those airports. These bonds are a major source of funding, providing an average of $2 billion annually for capital improvements at airports in the United States. Legislation jeopardizing currently allowable airport fees could have long-standing negative implications for revenue bond financing and the repayment of airport debt.

The following pie chart illustrates airport revenue by user group showing the revenue paid by on-airport users and that collected from the off-airport companies. With the exception of the off-airport car rental companies, which clearly are substantially underpaying for the benefits they receive, all airport users, including on-airport car rental companies, contribute substantially to airport revenues.

AIRPORT LANDSIDE REVENUES: 1987-88



If airports are prohibited from or restricted in charging fees to off-airport car rental companies, not only will they lose the substantial revenue they should in fairness be receiving from these off-airport companies, but the existing on-airport car rental companies will have tremendous incentive to move off-airport and in the process take with them the substantial revenues presently paid to airports.

The benefits car rental companies receive from operating on-airport are simply not great enough to keep them as tenants if they can escape airport user fees simply by moving off-airport, while maintaining virtually the same access to airport customers. It is important to remember that, in addition to a percentage of gross receipts fee, on-airport car rental companies also pay fixed rent for the terminal and other airport space they occupy. Also, as the Department of Transportation (DOT)/Federal Trade Commission (FTC) pointed out in their 1989 report, the differences in convenience of using on-airport firms and off-airport companies is decreasing rapidly. Due to landside capacity constraints, at 21 of the 27 large hub airports studied in the DOT/FTC report, on-airport car rental passengers, like off-airport rental car customers, had to be bused from the terminals to the rental car lots.

Airports estimate that revenues collected by all car rental companies at 30 major U.S. airports exceeded $2.5 billion in 1989. On-airport companies realized about two-thirds of the total market, with the remaining one-third being captured by the off-airport companies. But, while on-airport companies paid airport fees totalling some $183 million, equalling about 10 percent of their income, off-airport car rental companies paid only $5.3 million, or less than one percent of their gross receipts, to airports for access to the same customer base. If you were a competitor in this industry, and off-airport fees were disallowed, would you choose to have your van deliver customers to an on-airport location or to an off-airport location that is often equally as convenient?

Prior to enactment in 1978 of airline deregulation legislation, the off-airport car rental market was virtually non-existent. The explosive growth in the demand for air travel expanded the airport car rental market and enabled the off-airport companies to capture 1/3 of the nation-wide total market by 1987. At some airports individual off-airport car rental companies are now the largest car rental companies serving the airport. In Las Vegas, where the on- and off-airport car rental markets are virtually equal in size, the largest single operator by far is Alamo, which is off-airport.

At Los Angeles, one of the largest car rental markets in the country, off-airport companies have captured between 25% and 40% of the market. During a twelve month period during 1988-1989, on-airport companies at Los Angeles International Airport paid in excess of $18 million, based primarily on a fee of 9 percent of their gross receipts, whereas off-airport companies paid less then $75,000 in ground transportation trip fees, despite off-airport rent-a-car gross revenues estimated to exceed tens of millions of dollars. The City of Los Angeles has since adopted an off-airport gross receipts fee of 7 percent.

The rapid growth of the off-airport car rental companies has caused airport operators great concern because a significant amount of their car rental user fee revenue is being siphoned off by these off-airport companies. Today, over 70 airports charge off-airport operators an average percentage gross receipts fee of 8 percent as compared to an average 10 percent gross receipts fee for the on-airport car rental companies.

Despite claims to the contrary made by the off-airport companies, there is no evidence of a drop in car rental demand at those airports imposing off-airport percentage fees. In fact, we recently conducted a survey and found that new off-airport car rental companies have opened their doors for business at half of the airports currently charging an off-airport car rental gross receipts fee. This supports the finding of the FTC which said that the ease of entry for off-airport rental car companies was sufficient to maintain price competition in the car rental industry.

We believe, and the courts have reaffirmed time and time again, that a percentage of gross receipts charge on off-airport car rental companies is fair; it assesses similar charges to all consumers who rent cars and it directly reflects the volume of business a company -- large or small -- conducts at an airport. While some corporate giants like Alamo and Thrifty would rather pay fixed access fees per van, the percentage of gross receipts fee represents the direct relationship between business volume and fees paid, and therefore, is fair to both the large and small businesses alike. This is especially important to small companies because it does not impose upfront, startup costs or fixed costs, which can have a disproportionate impact on smaller entrepreneurs. Likewise, if a car rental company experiences seasonal dropoffs in its business, it will not be forced to cover a fixed fee during such lulls, but rather, its fee will be tied to the actual business it conducts during those periods.

Airport managers, as representatives of local and state governments, spend much of their time and energy trying to balance the competing and conflicting interests of companies that want to make use of the airport for profit. At the same time, however, we must constantly strive to protect the interest of those who should be the main beneficiaries of airport facilities and services -- the passengers and the communities we represent. To put it simply, Mr. Chairman, if you and your colleagues on this panel support this legislation, airport users and taxpayers will have to pick up the tab left by these profitable companies seeking a free ride.

That concludes our prepared statement, Mr. Chairman.

SUMMARY OF FEDERAL CASES INVOLVING OFF-AIRPORT RENTAL CAR GROSS RECEIPTS CHARGES

Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Authority:

In the U.S. District Court for the Middle District of Florida and the Court of Appeals for the Eleventh Circuit

Alamo challenged the airport's 10% gross receipts fee assessed on off-airport rental car companies on equal protection, due process, and commerce clause grounds. The airport prevailed on the equal protection issue in the Eleventh Circuit (825 F.2d 367, dated August 25, 1987). U.S. Supreme Court denied cert. on the equal protection issue on February 22, 1988 (108 S. Ct. 1022). The 11th Circuit found that the authority's schedule of user fees is rationally related to a legitimate governmental interest (raising revenues and recapturing revenues that would be lost if a segment of the rental car market profiting from business generated by the airport did not pay user fees.)

Regarding the differences in fees assessed on rental car companies versus hotels and motels, the court noted that the "the fee structure arguably accounts for the differing benefits that the operators of courtesy vehicles receive from their use of the airport." Disposing of Alamo's claim that "the Authority violated the equal protection clause because it allegedly treated off-airport companies in a similar manner as the differently situated on-airport companies," the court noted that the basic benefits are the same and that on-airport companies pay a fixed rent for their on-airport facilities, in addition to the gross receipts fees. Moreover, the on-airport companies obtained their status through a competitive bidding process.

"In sum, we find that the Authority's schedule of fees for off-airport companies and a fixed rent and fees for on-airport companies is rationally related to its objectives of maximizing revenues and obtaining fees from all car rental companies regardless of whether they operate on airport property. The Authority could rationally conclude that all car rental companies receive benefits from the presence of the airport. Its decision to establish a ten percent fee for off-airport companies was not unreasonable, particularly because the fee only applies to car rental customers who arrive at the airport and use the courtesy vehicles. Although this fee may harm off-airport competition in general and Alamo's profitability in particular, the fee schedule withstands constitutional scrutiny."

On remand from the Eleventh Circuit Court of Appeals, the district court ordered judgment for Sarasota Manatee Airport Authority on the remaining issues (relating to the commerce clause, due process, and Florida Sunshine Act claims) on November 15, 1988. The district court analyzed the substantive due process claim in much the same way the Court of Appeals had addressed the equal protection claim. It stated that the Appeals Court finding of a rational relation to a legitimate governmental objective largely determined the due process issue as well. On the Commerce Clause claim, the court stated that "the airport use and the benefit Alamo receives are not confined to determining the pro rata cost of its impact on airport roads and then setting that cost as a fee. Rather, the Authority may properly assess the user fee in terms of the overall business benefit that Alamo receives from the airport's presence and the Authority's costs of operating the airport as a whole, not just the roadways....Because 90% of Alamo's business is derived from the airport, it clearly receives a tremendous benefit from the airport's presence. Furthermore, though the cost of renting cars from an off-airport company may be increased, that extra cost resulting from the fee being passed on to the customer does not appreciably burden interstate commerce."

Club Car Rental d/b/a/ Budget Rent-A-Car v. City of Gainesville:

U.S. District Court for the Northern District of Florida, Gainesville Division

In district court, summary judgment was granted for the Airport on May 6, 1988. Budget had claimed that the airport authority's ordinance providing for a 10% gross receipts fee violated the due process and commerce clauses of the U.S. Constitution and the equal protection clauses of the U.S. and Florida Constitutions. The Court decided the resolution did not burden interstate commerce because it regulated evenhandedly without differentiating between interstate and intrastate travelers, and advanced legitimate governmental interests recognized in the Alamo v. Sarasota case. The court further stated that the fact that the plaintiff's competitive advantage over on-airport companies might be reduced as a result of the charge is not a commerce clause violation.

Plaintiff could not show the fee was unreasonable. "...All parts of the airport [are] involved in commercial air transport of passengers," the court said. "These facilities provide customers for plaintiff's business. Plaintiff's use of the airport facilities is indispensable to its business," and the 10% gross receipts fee has long been accepted as reasonable.

The Alamo ruling disposed of the equal protection and due process claims, because, the court ruled, the resolution is rationally related to the legitimate governmental interests of traffic control and raising revenue to pay airport operation and maintenance expenses. Further, the airport did not violate the equal protection clause by charging the car rental companies, while delaying implementation of fees for other categories of users.

Airline Car Rental, Inc. v. Shreveport Airport Authority

U.S. District Court for the Western District of Louisiana, Shreveport Division

Airline Car Rental (a licensee of Avis) challenged Shreveport's resolution which established a 7% gross receipts fee for off-airport car rental companies (versus 10% plus rental fees for on-airport firms). Airline had been an on-airport company but in 1977 it lost its lease when three other companies outbid it. It moved off-airport, and has not bid on leases for concession areas, despite construction of a fourth area which has remained vacant.

On summary judgment motions, the airport prevailed on antitrust and equal protection claims. On the commerce clause claim, it did not succeed in advancing the theory that the commerce clause did not apply because the authority was a market participant, but it later prevailed on the substantive issue of whether it had violated the commerce clause.

On the antitrust claim, the court found that the airport authority had immunity under the state action doctrine of Parker v. Brown, as clarified by Town of Hallie. It held that the Louisiana Airport Authorities Law, which grants airport authorities the power to enter into contracts, leases, and other arrangements granting the privilege of using airport space or portions thereof for commercial purposes and conferring the privilege of supplying services at the airport, clearly indicated the state's desire to vest control of airport management in municipalities and their agencies. As such, "This is sufficient to bring the Authority within the Parker exemption from federal antitrust liability."

On the equal protection claim, the court--noting the purposes of the fee, to retire airport debt and to pay for airport operations, maintenance, and equipment--held that "raising revenue is a legitimate state purpose." Further, it said that "Imposition of a fee of seven percent of gross receipts on non-tenant car rental business would make operation of car rental businesses more expensive and thus less attractive than such an operation had been previously; therefore, it was reasonable for the authority to conclude that the Resolution would discourage current tenant car rental businesses .from transferring their operations to off-premises locations. Imposing a similar fee on other businesses who use shuttles at the airport, however, would not have the same discouraging effect. The authority's use of the challenged classification was rationally related to the legitimate purpose of protecting a significant source of revenue.

The court held that the resolution did not affirmatively discriminate against interstate commerce, since the fee did not distinguish between in-state and out-of-state-customers nor between in-state and out-of-state car rental companies. The court cited the Supreme Court cases of Evansville-Vandenburgh Airport Authority v. Delta Airlines and Hendrick v. Maryland, as establishing the principle that if a state, at its own expense, establishes facilities to further interstate and domestic commerce, they are entitled to assess reasonable fees on users to help defray the costs of those facilities. The court found the Shreveport Airport to be such a facility, and held that raising revenue to support the airport aids, rather than hinders interstate commerce.

The court also relied on a fifth circuit case, Toye Bros. v. Yellow Cab, which upheld as reasonable a 10% gross fee on a limousine service's gross receipts derived from the use of an airport to pick up and discharge passengers. The fifth circuit had found that the fee was fixed according to a fair, uniform, and practical standard, and that a 10% fee "was a commonly accepted charge throughout the nation." The court thus found the lesser 7% fee to be reasonable and not an impermissible burden on interstate commerce.

General Rent-a-Car, Inc. V. Carol Roberts, et al.

U.S. District Court for the Southern District of Florida

General sued the Palm Beach County Board of Commissioners challenging the off-airport user fee of 8% of gross revenues generated by customers picked up at the Palm Beach International Airport (versus 10% for on-airport companies, who also pay rent for on-airport facilities they use). General alleged commerce clause, equal protection, due process, Sherman Act, civil rights, and various state law violations. Summary judgment was granted on September 15, 1988 disposing of all aspects of the suit in the airport's favor.

In the commerce clause claim, the court stated that "...the fee can be viewed as exacting a charge for the overall benefits conferred by the airports's presence, not merely the depreciation of the physical plant caused by the use of the airport by the off-airport companies." The fee was intended to be a general revenue raising measure meant to address a wide scope of matters concerning the financing and operation of the airport, and the court found it to be a reasonable means of doing so.

General conceded that the equal protection claim was controlled by the 11th Circuit decision in Alamo v. Sarasota. The due process claim was denied because the court found that imposing the fee was rationally related to the legitimate purposes of raising revenues for the airport.

On the Sherman Act claims, the court found that the Board of Commissioners were covered by the state action immunity doctrine of Parker v. Brown as clarified in Town of Hallie v. City of Eau Claire. Since the state enabling legislation expressly permitted the Board of Commissioners to establish exclusive franchises at the airport, the court found that it certainly indicated that anti-competitive results were contemplated by the legislature and could result from the legislation. General contended that the legislation granted the board only the right to set rates for services at the airport, not to regulate off-airport entities. the court found that, although General operated off-airport, "its operation is inextricably linked with PBIA, such that the legislation must be viewed as encompassing its operation to the extent it uses PBIA. In fact the Resolution is so tailored. General is not required to pay an 8 percent fee on business that is not generated from the airport."

The court found no basis for the civil rights and free speech claims asserted by General and granted summary judgment for the airport on both counts.

Alamo Rent-A-Car v. City of Palm Springs

U.S. District Court for the Central District of California
District Court Case Number: 88-436 JSL

Alamo sued Palm Springs over the Airport's 7% gross revenue fee on off-airport rent-a-car operators, alleging a violation of the Commerce Clause. After a trial on the merits, the court found that the city of Palm Springs was entitled to judgment as a matter of law. It stated that "The seven percent gross receipt fee adopted by defendant ... for the purposes of raising revenue for the continued operation and maintenance of the Palm Springs Regional Airport, which fee is applied uniformly against all non-tenant car rental companies including plaintiff ALAMO RENT-A-CAR, does not violate the Commerce Clause of the United States Constitution." The court cited the Shreveport and Sarasota decisions in support of its conclusion.

ALAMOCAS.1/29/90

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Alexandria, Virginia

April 27, 1990

The Honorable Howard Metzenbaum
Chairman
Senate Judiciary Antitrust Subcommittee
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested at your April 24 hearing on S.1822, enclosed is a summary of our 1990 off-airport rental car survey and a state-by-state listing of airports that impose gross receipts percentage fees on off-airport rental car firms.

Please call us should you have questions or need additional information.

Sincerely yours,

Charles Barclay

Charles M. Barclay
Executive Vice President

Summary of American Association of Airport Executives 1990 Off-Airport Rental Car Survey

A total of 94 airports, or 38 percent of the 250 airports that responded to the survey, currently impose fees on off-airport rental car companies. Of the 94 airports that impose fees, 72 presently charge a gross receipts percentage fee. (The other 22 charge fees not related to gross receipts.)

The average off-airport rental car fee at the 72 airports that have percentage fees based on gross receipts is approximately 8 percent, compared to an average gross receipts fee of approximately 10 percent for on-airport rent car companies.

According to the survey, 55 airports, or 59 percent of the 94 that have off-airport user fees in place said new rental car companies have moved into the local market since the off-airport rental car user fees were initiated.

Almost one-third, or 58 or the 180 airports responding to the question, "Have off-airport rental car operators refused to bid to come on airport assuming terminal space was available?," said off-airport firms have refused to bid when terminal space was available.

American Association of Airport Executives

Off-Airport Rental Car Survey

1989

The following is a summary of percentages of gross receipts fees collected by airports from on and off airport rental car companies. Please note that some airports may exempt certain rental car firms from the user fee structure based on gross revenue or type of service provided. Likewise, some percentages may include an adjustable user fee based upon the amount of gross revenue. Additional fees may also be collected.

Airport Name	**User Fee Structure of On-Airport Car Rental Companies** (% of Gross Receipts)	**User Fee Structure of Off-Airport Car Rental Companies** (% of Gross Receipts)
Alabama		
Birmingham	10	6
Dannelly Field / Montgomery Municipal	10	8
Huntsville - Madison County	10	10
Muscle Shoals Regional	10	10
Arizona		
Phoenix Sky Harbor International	10	7
California		
Burbank - Glendale - Pasadena	10	8
County of Orange - John Wayne	10	9
Los Angeles International	8-10	7
Palm Springs Regional	10	7
South Lake Tahoe	10	7.5
Colorado		
Colorado Springs	10	7
Montrose County	8	12
Steamboat Springs	10	10
Walker Field	10	10
Yampa Valley Regional	10	7
Florida		
Jacksonville	8-10	6
Melbourne Regional	10	8
Naples Municipal	10	10
Palm Beach International	10	8

Off-Airport Rental Car Survey, con't.
Page 2

	On-Airport (% of Gross Receipts)	Off-Airport (% of Gross Receipts)
Southwest Florida Regional	10	4
Tampa International	10	7
Georgia		
Atlanta Hartsfield International	10	8
DeKalb Peachtree	10	10
Savannah International	10	8
Idaho		
Pocatello Regional	10	10
Illinois		
Quad City	10	8
Iowa		
Des Moines International	10	10
Kentucky		
Standiford Field	10	10
Louisiana		
Baton Rouge Metropolitan	10	7
Lake Charles Regional	10	8
Shreveport Regional	10	7
Michigan		
Kalamazoo / Battle Creek International	9-9.8	4
Muskegon County	10	7
Mississippi		
Key Field	8.6	8.6
Golden Triangle Regional Authority	10	7
Gulfport - Biloxi Regional	10	7
Tupelo Municipal	9.2	7

Off-Airport Rental Car Survey, con't.
Page 3

	On-Airport (% of Gross Receipts)	**Off-Airport** (% of Gross Receipts)
Missouri		
Kansas City International	7.5-9	7
Montana		
Glacier Park International	10	6
Nebraska		
Lincoln	10	10
Omaha Airport Authority	10	8
Nevada		
Reno Cannon International	10	7-10
New Jersey		
Newark International	12.5	8.5
New York		
John F. Kennedy International	12.5	8.5
Kennedy/LaGuardia	12.5	8.5
North Carolina		
Fayetteville Regional	10	10
New Hanover County International	10	10
Ohio		
Akron - Canton Regional	10	10
Oregon		
Portland International	10	4-7

Off-Airport Rental Car Survey, con't.
Page 4

	On-Airport (% of Gross Receipts)	**Off-Airport** (% of Gross Receipts)
Pennsylvania		
Erie International	10	10
Harrisburg International	10	10
Reading Regional	10	10
South Carolina		
Charleston International	10	8
Columbia Metropolitan	10	8
South Dakota		
Sioux Falls Regional	10	5
Tennessee		
Chattanooga Metropolitan	8-10	2
McGhee - Tyson	10	10
Tri- City Regional	8.5	2-8
Texas		
Dallas / Ft. Worth International	10	8
Midland International	10	10
Valley International	10	10
Virginia		
Richmond International	10	6
Washington		
Boeing Field / King County International Airport	5	5
Pangborn Memorial Airport	10	10
Spokane International	8.5	8.5
West Virginia		
Spokane International	8.5	8.5
Yeager	10	10

Off-Airport Rental Car Survey, con't.
Page 5

	On-Airport (% of Gross Receipts)	**Off-Airport** (% of Gross Receipts)
Wisconsin		
Austin Straubel Field	10	10
Central Wisconsin	10	10
Outagamie County Airport	10	5
Wyoming		
Natrona County International	10	10

This information was obtained from the American Association of Airport Executives 1989 Off-Airport Rental Car Survey. The 1989 Off-Airport Rental Car Survey was compiled from questionnaires received from 272 airports. Please note the airports listed in this document may not represent all airports collecting a percentage of gross receipts fee from off-airport rental car companies.

Senator **Metzenbaum**. Thank you very much, Mr. George.

Now, we will hear from Mr. Mark Cooper, director of research, Consumer Federation of America. Before doing so, I don't know whether my colleague who has joined us has an opening statement. Senator Kohl.

Senator **Kohl**. That is all right. I will put my statement in the record.

[The prepared statement of Senator Kohl follows:]

OPENING STATEMENT
SEN. HERB KOHL
GROSS RECEIPTS FEES/OFF-AIRPORT CAR
RENTAL COMPANIES
APRIL 24, 1990

MR. CHAIRMAN, I WANT TO COMMEND YOU FOR CALLING TODAY'S HEARING, AND TO APOLOGIZE FOR BEING LATE.

THIS MORNING, WE WILL EXAMINE HOW AIRPORTS IMPOSE FEES ON CAR RENTAL COMPANIES WHICH ARE NOT LOCATED ON THE AIRPORTS, BUT WHICH REGULARLY PICK UP CUSTOMERS THERE. MORE SPECIFICALLY, WE WILL LOOK AT WHETHER IT'S UNFAIR FOR AIRPORTS TO CHARGE OFF-AIRPORT CAR RENTAL COMPANIES A PERCENTAGE OF THEIR GROSS RECEIPTS; WHETHER THESE FEES HARM CONSUMERS; AND WHETHER -- EVEN IF ALL THIS IS TRUE -- WE SHOULD AMEND OUR ANTITRUST LAWS TO PREVENT AIRPORTS FROM RAISING REVENUES THROUGH SUCH A PRACTICE.

TO SOME, THIS ISSUE MAY SEEM ABSTRACT. BUT IT IS VERY REAL TO THE BUDGET-CONSCIOUS FAMILY OF FOUR PLANNING TO SPEND A WEEK IN OUR NATION'S CAPITAL. THEY ARE CONCERNED NOT ONLY WITH THE COST OF AIRFARE, BUT ALSO WITH THE PRICE OF HOTELS AND CAR RENTALS. AND AS SOMEONE WHO SPENDS A LOT OF TIME TRAVELING -- IN THE PAST WEEK I HAVE BEEN TO ARIZONA, FLORIDA AND WISCONSIN -- IT IS A VERY SERIOUS ISSUE TO ME.

TO THE BEST OF MY KNOWLEDGE, THIS COMMITTEE HAS NOT YET LOOKED AT IMPOSING GROSS RECEIPTS FEES ON OFF-AIRPORT CAR RENTAL COMPANIES. SO IN THE CONTEXT OF TODAY'S HEARING, I HOPE WE CAN SPEND SOME TIME LEARNING ABOUT HOW THE CAR RENTAL INDUSTRY WORKS AND HOW AIRPORTS RAISE REVENUES.

MR. CHAIRMAN, I LOOK FORWARD TO LISTENING TO OUR WITNESSES AND GETTING TO THE HEART OF THIS MATTER.

Senator METZENBAUM. Mr. Cooper, please proceed.

STATEMENT OF MARK N. COOPER, DIRECTOR OF RESEARCH, CONSUMER FEDERATION OF AMERICA, WASHINGTON, DC

Mr. COOPER. Thank you, Mr. Chairman. Based on several detailed analyses, the Consumer Federation of America believes that the gross receipts fees imposed on off-premise rental firms are irrational and unfair. The report we released today shows that the problem is growing rapidly. From about a dozen airports in 1985, to two dozen in 1987, today we have over 70 with fees in place and approaching 90, total, either in place or planned.

The abuse is not only becoming more pervasive, it is also becoming more profound. Airports now claim a region of economic influence in which rentals must be paid on a gross receipts basis even though, first, no contract existed between the off-premise firm and the renter prior to deplanement; second, no courtesy van was used going to or returning to the airport; third, the rental took place as much as 25 miles away from the airport; fourth, it occurred as long as 48 hours after arrival; and, fifth, is specifically levied only on nonresidents of the county of the airport. That is a gross discrimination.

These fees are not rationally based on costs. The costs imposed on the airport by off-premise rental firms are small and fixed, generally one trip to and from the airport, but the airport's take of the gross receipts fee grows larger as the car is held for a longer period of time.

On average, we have averaged that 95 cents out of every dollar collected from gross receipts fees on off-premise rental firms represents an excess above cost. That is not a meaningful contribution or a fair share. It is simple extortion.

In the vast majority of cases, these fees cannot be justified as providing equitable treatment between on- and off-premise firms. On-premise firms have advantages of convenience, shorter or no van rides to their cars, and access—rental stands right in the terminal.

The airport fee structures do not reflect these advantages. For example, even though on-premise firms enjoy this locational advantage, the difference between on- and off-premise firms is only slightly above 1 percent, or perhaps 2 percent, as suggested by the previous witness.

In 42 percent of the cases in their own survey, on-premise firms do not use vans, while off-premise firms do, and both are charged an identical gross receipts fee, or soon will be.

Now, obviously, with so blatant an abusive pricing scheme, we have seen a web of justifications, and you have heard some of them today. Our review of airport fee structures undercuts that because there are just inconsistencies.

We find that these fees cannot be justified on the basis of achieving economic efficiency, controlling congestion, maximizing revenue, or extracting fees from all those who benefit from the existence of the airport.

The fees have spread because airports and on-premise firms share an interest in expanding and exploiting the monopoly power of the airports. By enforcing the airport monopoly over access and raising barriers to entry, airports create monopoly rents and the on-premise firms are able to price with less competition.

These are, of course, exactly the practices that the Federal Trade Commission found had helped on-premise firms monopolize the industry in the 1970's. Unfortunately, on-premise firms have now found the perfect henchmen, the airports, to do their dirty work because the airports are immune from prosecution under the antitrust laws and have been exempted from regulation of fees by the FAA.

Thus, airport pricing is subject neither to market forces nor to disinterested regulation, and the consumer faces a cruel irony. The airports tell Congress and the courts off-premise firms should pay because they would not exist absent the presence of an economically healthy airport. But the FAA then turns around and simultaneously concludes that they should not be subject to regulation because, quote, "they are not so significantly linked to air transportation." The consumer faces the logical conclusion that airports are not significantly linked to air transportation.

We believe that these fees should be rational and equitable. If air travelers have to pay more for airports, that doesn't offend us one bit. We don't see why they should pay less when hotel room renters or auto car renters are forced to pay more. We think the right people should pay for the airports, and we support airport growth and expansion.

We believe that the private right of action embodied in the bill before you is a sensible way to go. The FAA is ill-equipped and attitudinally disinclined to regulate fees. The commerce cause does not provide an economic test of rationality. These practices would be illegal if they were executed by private sector entities; there is no doubt about it.

So we believe a private right of action which would hold open the question of what is just, what is reasonable, what is due and undue discrimination, will impose rationality, efficiency, and discipline on airport pricing.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Cooper follows:]

CFA Consumer Federation of America

TESTIMONY OF
DR. MARK N. COOPER
DIRECTOR OF RESEARCH
CONSUMER FEDERATION OF AMERICA

ON

AIRPORT GROSS RECEIPTS FEES

BEFORE THE
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS,
JUDICIARY COMMITTEE
U.S. SENATE

APRIL 24, 1990

1424 16th Street, N.W., Suite 604 • Washington, D.C. 20036 • (202) 387-6121

Mr. Chairman and Members of the Committee,

My name is Dr. Mark N. Cooper. I am Director of Research of the Consumer Federation of America (CFA) with offices at 1424 16th Street, Washington D.C., 20036. Founded in 1968, CFA is the nation's largest consumer advocacy organization encompassing more than 240 national, state and local consumer, senior citizen, low income, union, farm, labor, public power and cooperative groups representing more than 50 million people.

I appreciate the opportunity to testify before you today on the issue of gross receipts fees imposed on off-premise auto rental firms.

Based on three detailed analyses of the impact of gross receipts fees on off premise firms, which are attached, the Consumer Federation of America concludes that this is an economically irrational and unfair practice that will cost consumers (especially vacation travelers) hundreds of millions of dollars as it spreads throughout the nation.

There can be no mistake about the spread of these fees. From less than two dozen airports with these fees a few years ago, today there are close to 90 with gross receipts fees in place or in the process of being imposed. The fees are most prevalent at larger airports which represent nearly half of all enplanements.

THE FUNDAMENTAL ECONOMIC ABUSE

The fees are not rationally based on cost. What airports claim as a "fair contribution" or "full support" for general airport expenses is really a gross subsidy.

> The costs imposed on the airport by the traveler are small and fixed -- one trip on and one trip off the airport in a courtesy van -- but the airports' take is large and grows larger the longer the auto is used.
>
> On average, approximately 95 cents out of every dollar collected for gross receipts fees from off-premise firms represents a "contribution" above cost.

Let me explain how we arrive at that figure. The extent of monopoly pricing can be represented in traditional economic terms with the Lerner Index. This index is the proportion of price that exceeds costs (excess profits as a portion of total price).

It measures the extent of market power in setting prices. In a competitive market the Lerner Index would be zero (since cost includes a normal profit or a fair return on investment). It is calculated as

L= (price-cost)/price

The cost of providing services to off-premise firms are essentially those for roadways, plus allocations of administrative costs, security costs, etc. These costs have been calculated a number of times by accountants for both airports and off-premise rental firms. These estimates range from \$.09 to \$.32 per vehicle trip or \$.18 to \$.64 for each round trip.[1]

The average daily rental for off-premise firms is approximately \$29/per day.[2] The average duration of a rental is approximately 4 days.[3] The revenues generated by a 5 percent gross receipts fee for 4 days at \$29 per day is \$5.80. A 10 percent gross receipts fee generates \$11.60.

Thus, a 5 percent fee at a high cost airport yields a Lerner Index of .88

L = (\$5.80 - \$.64)/\$5.80 = .88

A 10 percent fee at a low cost airport yields a Lerner Index of .98.

L = (\$11.60 - \$.18)/\$11.60 = .98

The size of the Index clearly indicates a distortion of the pricing function. In layman's terms, since the average fee on off-premise firms is just over 8 percent, just about 95 cents out of every dollar is an excess of price above cost collected by airports.

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[1] Touche Ross, Port of Seattle, Ground Transportation Cost Allocation Methodology: Report of Procedures and Review, November 22, 1988, Exhibit B, Courtesy Cars; Clair, Joseph R., Ground Transportation Vehicle Permit Program, November 21, 1986, Exhibit A-2; Laventhol & Howarth, Statement of Total Costs and Alamo Rent-A-Car, and Appendix J, June 21, 1983.

[2] Alex Brown & Sons, The Auto Rental Industry (Baltimore, Md: November 1988), p. 14; Office of Economics, U.S. Department of Transportation, A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies (Washington, D.C.: April 1989), p. 41.

[3] Alex Brown, op. cit., p. 1.

THE INEQUITY BETWEEN ON PREMISE AND OFF PREMISE FIRMS

In the vast majority of cases, the fees cannot be justified as providing equitable treatment between on- and off-premise firms.

> On a national average basis, the difference in fees between on- and off-premise firms is just over 1 percent, but on-premise firms enjoy major advantages from their preferred location.

On-premise firms have advantages of convenience (shorter, or no van rides to their cars) and access (rental stands right in the terminal where walk-up business can be easily attracted). However, airport fees structures do not reflect these advantages.

> In 42 percent of the cases, on-premise firms do not have to use vans, while off-premise firms do, but both are charged an identical gross receipts fee (or soon will be).
>
> In at least 80 percent and probably 95 percent of cases on-premise firms receive much more benefit from their location than their relative burden under airport fee structures.
>
> In only 4 percent of the 89 airports with gross receipts fees for off-premise firms planned or in place do on-premise firms clearly pay for both advantages (whether they pay enough is not clear).

THE IRRATIONALITY OF AIRPORT FEE STRUCTURES

With so blatantly abusive a pricing scheme, it is not surprising to find a web of economic justifications spun out by airports to defend the practice. However, our review of airport pricing policies makes it clear that these are merely rationalizations which are undercut by a series of inconsistencies. We find that these fees cannot be justified as a part of a coherent plan to 1) achieve economic efficiency, 2) control congestion, 3) maximize revenue, or 4) extract fees from all those who benefit from the airport.

The fees are far from cost based -- gross receipts fees from off-premise firms far exceed costs; fees from a variety of aviation users like small commercial flights and general aviation do not.

Some off-premise users who run courtesy vans through the airport, like hotels and motels, are not charged or are charged much less than others, like auto-rental companies. Observations that the auto rental companies are more "dependent" on the airport than other businesses only underscores the exercise of market power (i.e. the elasticity of demand for services is being exploited by the airport).

At the same time, even though every off-premise auto renter makes one and only one round trip to the airport, those who keep the car a longer time pay a lot more, even though the actual service provided (a take-off and landing, a round trip in a courtesy van) is identical.

The fees fall heaviest on customers who are most likely to arrive at off-peak hours -- tourists flying on discount tickets and vacation packages.

THE EXTENSION OF MARKET POWER

The fees have spread because airports and on-premise firms share an interest in expanding and exploiting the potential market power of the airports. By expanding airport monopoly and raising barriers to entry to the airport market airports create monopoly rents and the on-premise firms are able to price with less market discipline.

In addition to imposing fees, airports have restricted the access of off-premise firms to walk-through business. The airports now claim geographic areas of influence in which cars rented far from the airport and long after the arrival of a traveler are included in the gross receipts fees, even though no contract existed between the off-premise firm and the traveler prior to arrival and no courtesy van was used going from or coming to the airport.

Airports have also begun imposing conditions on firms in order to enter the airport, raising further barriers to entry into the market.

THE LEGAL LOOPHOLE

These are exactly the types of practices that the Federal Trade Commission found had helped the on-premise firms monopolize the industry in the 1970s. Those firms were forced to consent to cease and desist from these anticompetitive practices.

Unfortunately, part of the restriction has expired. Moreover, the on-premise firms have found a henchman -- the airports -- who is immune from prosecution.

> An antitrust exemption and the constitutional status of the airports shields them from tests of economic rationality or fairness as standards for their behavior.
>
> A decision by the FAA means that it will not impose the just and reasonable standard of the FAA Act.

Thus, airport pricing is subject neither to market forces nor to disinterested regulation and the consumer faces a cruel irony. The airports tell Congress (and the courts) that off-premise firms should pay because they "would not exist absent the presence of an economically healthy airport," but the FAA simultaneously concludes that rental companies should not be subject to just and reasonable standards because they are not "so significantly linked with air transportation."

THE SOLUTION

The public policy response to this pricing problem must be to pressure the airports to engage in more rational and equitable pricing and to control the exercise of market power. Public policy should not simply give in to the efforts of airports and on-premise firms to recreate the anticompetitive on-premise monopoly of the 1970s.

Suggestions that the airports should equalize the pain by extending the gross receipts fees to all off-premise entities simply compounds the abuse and inequity.

> It expands the abuse to other sets of travelers, while protecting the true cost-causers from shouldering their fair share of common and joint costs.

Suggestions that all off-premise firms be allowed to move on-premise are both impractical and unfair to the cost conscious consumer.

> First, even if space were available, many small firms cannot afford to move on-premise. Their operations are simply too small to meet minimum guarantee and other requirements imposed by airports.

> Second, by moving onto the airports all firms would become subject to the exercise of airports monopoly power. A desirable consumer choice -- a low cost off-premise alternative that requires a bus ride -- would be denied the public.

Since the FAA is institutionally ill-equipped and attitudinally disinclined to regulate landside pricing, the possibility of imposing government regulation is nil.

Since airports have market power and a strong incentive to maximize revenues from politically unrepresented tourist travelers, exposure to the antitrust laws would be a significant step to impose discipline on the airports.

> A private right of action under the antitrust laws will impose a traditional economic test on airport pricing practices.
>
> The Fair Airport Access Assurance Act (S. 1822), introduced by Senator Breaux, will achieve the goal of imposing economic rationality on the pricing of access by requiring that fees not be anticompetitive, as defined by the antitrust laws. It is a simple, effective solution in which private parties bear the burden of proof and the interests of the public in promoting and protecting competition take precedence over the interests of individual airports or auto rental firms.

Senator **METZENBAUM**. Thank you very much, Mr. Cooper.

Mr. Bertholf, under the Airport and Airway Improvement Act of 1982, airports are prohibited from imposing discriminatory or unjust fees on airlines. Now, how can you oppose having the same standard apply to businesses that don't even operate on the airport?

Mr. **BERTHOLF**. Mr. Chairman, we don't believe that the act has changed. We believe that the off-airport users that access the airport for their businesses are reasonable businesses to be charged a fee.

Senator **METZENBAUM**. But don't we talk about unreasonable and unjustly discriminatory? Aren't we just applying the same test, if this bill were to be passed, that the Airway Improvement Act of 1982 has in it? Isn't that all that is in that bill?

Mr. **BERTHOLF**. The unjust and discriminatory factors have already been tried in court. The fees have not been found to be discriminatory in any way.

Senator **METZENBAUM**. Well, then, if you feel that that is the case, under this Breaux bill, as I read it, it merely makes it unlawful to impose any fee, et cetera, or condition or tax, the effect of such tax, fee, or condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Now, I guess I am having a little difficulty in following why the same standard that is applicable to airlines under the 1982 act—and you have not objected to that from a standpoint of local need—why you object to the same standard being applicable here?

This isn't an absolute fiat that you have to have a certain number of rental car companies, or small ones, on the airport. This is just making the same standard applicable.

Mr. **BERTHOLF**. Mr. Chairman, perhaps it would be better if I referred that to Mr. Berg, who is the chairman of the AOCI Legal Committee.

Mr. **BERG**. Mr. Chairman, we believe there is a tremendous difference between the air side and the ground side. There is an overriding Federal interest in air transportation. We don't believe there is the same Federal interest in the concession area.

Congress has never regulated concessions; they have never regulated rent-a-cars or any other concessions or restaurants. Traditionally, those facilities have been charged on a gross receipts basis, and we don't believe that Congress should become a price regulatory commission for airports.

Senator **METZENBAUM**. How do you see this as a price regulation—there is nothing in here that says we are regulating the prices. It merely says that you have the right to maintain an action. We are not telling you what fees to charge.

Mr. **BERG**. There is also a tremendous difference with the AIP Program, in that generally those funds aren't available for groundside activities; they are mostly on the air side.

Senator **METZENBAUM**. What is AIP?

Mr. **BERG**. The airport improvement grant agreements.

Senator **METZENBAUM**. Well, I have difficulty in understanding the distinction you are suggesting between regulating the in-the-air operations as distinguished from on-the-ground because in the last analysis we are talking about the right to regulate, and I don't see what difference it makes whether it is in the air or on the ground.

Mr. **Berg**. Well, Congress has never exercised power over regulating airports on the ground side in the concession area. This would be a tremendous extension of congressional jurisdiction.

Senator **Metzenbaum**. But we are not regulating.

Mr. **Berg**. Well, you are regulating when you are setting new standards on the ground side. The courts have considered these issues under burden on interstate commerce. They have rejected it on the merits. They have considered it under the equal protection clause of the Constitution, they have considered it under due process.

There is already a tremendous judicial remedy in both the Federal and State courts if somebody believes they have been charged an unjust charge. This is just that they are dissatisfied with the way the litigation has turned out and they are seeking to bring in new terms in an attempt to bring in a new round of litigation.

Senator **Metzenbaum**. Has it ever bothered you as a matter of law, fairness, ethics, and equity that when you set a flat rate and you bid minimums, all that you are actually doing is saying to the biggest companies, you have a right to be here and the smaller ones don't have a ghost of a chance of being here?

A new company coming up wanting to rent their cars wouldn't have a ghost of a chance of getting on the airport against a Hertz or Avis or Budget or National. And it just seems to me that there is something very discriminatory about the fact that airports from as far as back as I can remember always charged the same 10 percent. There may be some exceptions to that that I don't know about at the moment. I don't doubt that there are.

But that would appear to me to be very discriminatory in that it assures the biggest companies to be on the airport and says to the rest of them, go fly your own kite.

Mr. **George**. Mr. Chairman, over the years the airports have made available to all classes of rental car companies the free access to be able to bid on those facilities. The facilities are open, and in the case of Quad City, when we initially bid our facilities when we opened our new terminal, Thrifty Car Rental was not one of the companies that chose to come on and bid for the facility. At a later date when the facility became available, they chose to move on themselves and they now are on the airport.

We open up in a nondiscriminatory manner every 3 to 5 years the ability to bid for facilities coming on to the field in a fair, open, and even field.

Senator **Metzenbaum**. Mr. George, realistically speaking, I don't know anything about the volumes of these respective companies, but I know that Hertz, as a tremendously bigger company, is going to get far more volume than is Thrifty at your airport. I don't care which airport it is in the country; they are just going to get more volume.

I remember yesteryear, normally Avis ran second. I don't know if that is still the case. But, certainly, Thrifty is not in the same ballpark; they don't have that many feeders. So you can't say that there isn't some element of unfairness when you set a flat rate and say that all you are going to do is bid minimums.

Mr. GEORGE. Mr. Chairman, we have found over the years—and I have been in airports now for about 18 years—that what you were saying a number of years ago was true, that the major companies—Hertz, Avis, and National—were the kings.

However, at the Quad City Airport right now, Budget Rental Car is the No. 1 company, with Thrifty and Avis, I think it is, about on the same par.

Senator **METZENBAUM.** And Hertz is——

Mr. GEORGE. No. Hertz is down the list a little bit.

Senator **METZENBAUM.** That is amazing to me.

Mr. BERTHOLF. Mr. Chairman, might I reflect the process that is currently open in Phoenix? Our facilities are available and we are having six positions set aside for the typical process of bidding. We have also provided two small business enterprise type facilities, as well as two additional disadvantaged business enterprise facilities. So we are trying to make that available to all kinds of users and all classes.

Mr. BERG. I would say, too, that airports generally now have more slots. It is not just the three that it used to be. I know at the New York airports, at Kennedy, LaGuardia, and Newark, we have five on-airport rental car concessions. At a lot of other airports, there are more.

Senator **METZENBAUM.** The Department of Transportation found that Hertz, Avis, National, and Budget control 95 percent of the market on airports based on 1987 sales. Now, I don't know whether that has changed that radically in 3 years, but it is certainly rather impressive.

Let me go on with some questions.

Mr. Bertholf, suppose I fly into one of these airports with a fee on off-airport rentals and I have made a reservation in advance to rent a car. Then I find out that the airport has tacked on 15 percent to my bill just because the company is located off the airport and has to drive a van to the airport to pick me up. When I reserved the car, I didn't care where the company was located; I just wanted a good price. What options does the consumer have if he doesn't want to pay this fee?

Mr. BERTHOLF. Mr. Chairman, the option that he would have, obviously, is to change his reservation, which I don't think answers your question. The fee would be passed along whether it was that particular firm or another firm, and the option is just to rent the car.

Senator **METZENBAUM.** What if he took a taxicab to pick up his rental car or her rental car? Would the fee still have to be paid by the off-airport rental car company?

Mr. BERTHOLF. If he took a taxicab or rented the car 48 hours later, in the case of Phoenix the answer to that would be no.

Senator **METZENBAUM.** And how about at the rest of the places?

Mr. BERG. Well, I think in New York, the New York airports, it is based on a certain time of landing at the airport, which is a method—really, it is an auditing method because if the person lands at the airport, 99 percent of the time, at least, if not more, he is going to be taking the courtesy van to the off-airport location.

Senator **METZENBAUM.** Well, let me carry this one step further. You have a hotel on the airport. That hotel pays a fee, but if a bus comes along and picks up passengers for off-airport hotels or motels, or I guess even restaurants or any other business within the vicinity of the airport, they don't pay a fee, do they?

Mr. GEORGE. They pay a fixed fee.

Senator METZENBAUM. Pardon?

Mr. GEORGE. They pay a fixed fee because of the class of individual, but they also do not, Senator, divert revenue from the airport itself.

Senator METZENBAUM. If you have a hotel on the airport, it certainly would be diverting revenue, wouldn't it?

Mr. GEORGE. Why would it be diverting revenue? The revenue—we would get a percentage of the gross from the hotel located on the airport, and that is what we do with the kind of contract we have with them.

Senator METZENBAUM. Well, let me——

Mr. GEORGE. Additionally, the airport—excuse me—the hotel would charge, every time you would have a room rate, a fee to the city. It would be rebated to the city for a tax or something else.

Senator METZENBAUM. Well, if there is a local tax, but the on-airport hotel would probably pay that fee, I would guess. Now, my recollection is that if you have a hotel on the airport—and I had a number of them when I was in the private sector—that is fine. You are paying for that exclusive concession.

Now, if Sheraton or Hilton or Holiday Inn or anybody else is off the airport and they have a limo or car or bus or van come to pick up the passengers, they don't pay any fee comparable to the fee that is being paid by the hotel that is on the airport.

How do you make a distinction in charging car rental companies and not charging off-airport hotel companies?

Mr. GEORGE. We do charge off-airport hotel companies. We charge them—they are a different class of company. As we said in our testimony, we classify companies in different areas and they pay a per-passenger charge.

Senator METZENBAUM. Not all airports do that.

Mr. GEORGE. Or a van fee.

Senator METZENBAUM. Pardon?

Mr. GEORGE. Or a van fee, a per-passenger charge or a van fee.

Senator METZENBAUM. But it is not comparable to the 8 percent vis-a-vis 10 percent in the rental car business that is charged for hotels, isn't that correct?

Mr. GEORGE. It is a different class of——

Senator METZENBAUM. Pardon?

Mr. GEORGE. It is a different class of user.

Senator METZENBAUM. And I am asking you why you make the distinction.

Mr. GEORGE. Because over the years we have classified users that way.

Senator METZENBAUM. Well, I know. You told me you did it.

Mr. GEORGE. Yes.

Senator METZENBAUM. That is a fait accomplis. Now, I am asking you why you are doing it, how you justify the distinction. Just telling me you did it doesn't give me an answer; it is just telling me you are doing it.

Mr. **Berg**. Mr. Chairman, if I could add, the courts have considered this issue on equal protection.

Senator **Metzenbaum**. I don't care about what the courts have said. I want to know why you are doing it. I am not interested in what the courts have said. Why are you doing it? Why do you charge rental car companies and not hotels for the same vans coming around? They look the same, they take the same amount of space.

You have a hotel on the airport with an exclusive contract, you have hotels off the airport. They are comparable businesses. Why do you charge one and not the other?

Mr. **Berg**. Well, one thing is the hotel on the airport could never possibly handle the number of people who want to stay near the airport.

Senator **Metzenbaum**. They could if they expanded. They have plenty of room to expand in most instances, not every airport, but most.

Mr. **Berg**. It is considered a benefit to the airport to run these vans to hotels in some instances, whereas the on-airport rental car firms had been able to handle all the business that was at the airport.

Senator **Metzenbaum**. On-airport what?

Mr. **Berg**. Rental car firms could handle all the business that was on the airport, all the demand for rental cars.

Senator **Metzenbaum**. And if your hotel on the airport said we could expand and handle all the business, would you then bar all the off-airport hotel vans or would you charge them the same fee?

What I am talking about is the distinction. You are making the distinction that one can handle the business, the other can't. My answer is tell the hotel to expand. I am sure the hotel would be delighted to if they had total exclusivity. What I am saying to you is it seems to me there is no rationale for your position between hotels and rental car companies.

I won't take all of the time. Some of my colleagues are here.

Mr. **Cooper**. Mr. Chairman, if I could offer an explanation as opposed to a rationale, the explanation is market power, and you heard a perfect example of how a monopolist prices his services. He looks at the elasticity of demand and says I can get more from him, and that is how they stick it to, the person who exercises market power. That was a classic, perfect statement of market power.

Senator **Metzenbaum**. Mr. Cooper, do you have any view on the question of whether or not it is appropriate that there be a flat 10-percent fee charged for rental car companies on the airport? I guess some may charge as much as 15, but in the main I think 10 percent is the going rate. I would guess it prevails in 80, 90 percent of the instances. Do you have any view on that subject?

Mr. **Cooper**. My view is the following. The history was that the airports could get away with 10 percent because they had that market power. The growth of the off-premise firms eroded their market power. We saw the example of competition putting pressure on their revenues. They call it diversion; I call it competition.

Their answer has been now to this growth in competition to say, look, we are losing our money because we have lost our monopoly power, our market power. Their solution is to extend monopoly power, not only to off-premise firms, not only to preexisting contracts, but to 25 miles and 48 hours. They have drawn a wall. They say we want this—this is how big we want our monopoly to be.

As a consumer advocate, I think it is incorrect to allow the airports to re-create that monopoly. We are against monopoly, and that is why we are here before this committee. So we want to protect and defend the competition which has come to exist.

Senator METZENBAUM. You didn't answer my question.

Mr. COOPER. The answer to the question is simply when the competition grew, the on-premise firms had paid for monopoly, that 10 percent, and they were stuck, having made a bad deal because now they faced competition.

One of two things should happen in those circumstances. They should renegotiate and say, well, we signed a contract on the assumption of monopoly power; we no longer have it, we can't pay it. That is what they are saying, and so they would renegotiate their deal with the airports.

Senator METZENBAUM. We have another panel and several of our Senators have joined us. We are happy to have them. Senator Thurmond, did you have any questions or comments that you wished to make?

Senator THURMOND. Thank you. I have a brief statement that I will read first, and then a few questions.

Senator METZENBAUM. We are happy to have you.

Senator THURMOND. Mr. Chairman, today's hearing focuses on S. 1822, the Fair Airport Access Assurance Act. This bill, introduced by Senator Breaux last October, would amend the Clayton Act to prohibit certain activities by local governments that operate airports. It would make it unlawful for any governmental entity to impose an unreasonable and unjustly discriminatory tax on a nontenant or off-airport business if the effect would be to substantially lessen competition or tend to create a monopoly.

Mr. Chairman, I have heard from a large number of individuals about this issue. Many car rental companies and their employees, both small independent companies and the larger car rental franchisees, have written and visited me personally to explain their position. In addition, I have heard from each of the three major airport authorities in South Carolina.

There is no doubt in my mind that this is a very difficult issue. Both sides have legitimate and compelling arguments supporting their position. Mr. Chairman, since this is a difficult question, it is appropriate that we hold this hearing, and I commend you for doing so.

The testimony presented today should be helpful in this regard. I am very interested in hearing what the witnesses have to say and in reading their prepared testimony. I cannot stay for the full hearing, but I will read the testimony of those I miss. I want to thank them for their time and effort in appearing before us this morning.

Now, I have a couple of questions here I would like to ask Mr. George and Mr. Bertholf. Mr. Bertholf and Mr. George—either one of you can answer—in your prepared statement you note that over 70 airports charge off-airport car rental companies an access fee. What percentage of total airports does that involve? Or put another way, how many airports do not charge a fee?

Mr. GEORGE. About 430, Senator.

Senator THURMOND. Those airports that do charge this fee, do they all charge a percentage of gross receipts?

Mr. GEORGE. It varies. Some charge a lower percentage of gross to a higher percentage of gross, and we have conducted a study and we can make that study available for the record if you would like us to submit that to you.

Senator THURMOND. I think it would be helpful, Mr. Chairman, if they would send the study.

Senator METZENBAUM. We would like to have the study.

Mr. GEORGE. We will ensure that that is submitted.

Senator THURMOND. I won't ask for it to go in the record. It may cost too much to print, but make it available in the committee.

Senator METZENBAUM. Thank you very much.

Senator THURMOND. Do you know whether there are plans to expand this fee to other airport users—for example, hotels? If so, how would the fee be calculated?

Mr. BERTHOLF. Senator, I am not sure that I could speak for the entire industry on whether or not they would be going to the hotel issue or not. I am sure that the airports, because of the desire and need for revenue to expand for safety, security, and the general operation of our airports and capacity issues, will look to all sources of revenue to help their airport and their local community.

Senator THURMOND. Mr. Cooper, in the absence of a source of income like off-airport access fees, how should airports raise the much-needed capital to operate? Should local taxpayers be required to pay more in taxes to raise this revenue?

Mr. COOPER. In the presence of this legislation, what you would have is you would have an effort to identify a way of allocating the burden of the costs of that airport. That doesn't mean there would be no fees collected from off-premise firms, but those fees would have to be justified in the context of both the competitive impact and the reasonableness of the fees, and one of the key questions would be what are other people paying.

Local entities, in essence, would not have to raise local taxes one penny. They could recover all of the cost burdens of the airport from air travelers and other users of that airport as long as it could pass the review of a just and reasonable standard before the courts.

Senator THURMOND. Now, Mr. Cooper, your prepared testimony suggests that you would not oppose the payment of a fee by off-airport firms if that fee were cost-based. Would you explain, please, why an off-airport firm that derives its business from airport passengers should not have to contribute to the support of the entire airport operation rather than simply the actual cost of using the airport road? And if firms like these do not contribute, who should cover this expense?

Mr. COOPER. Well, in fact, Senator Thurmond, if everyone covered the costs that they impose on the airport, there would be no contribution necessary from anyone. But, obviously, airports have common and joint costs that are difficult to allocate.

So what you would have under a just and reasonable standard is the identification of direct cost and common and joint cost, and then you would have a rule for allocating them. As I pointed out in my testimony, 95 cents on the dollar is not a fair contribution.

I am perfectly willing to have everyone contribute to the common and joint costs of the airport, but 95 cents on the dollar is not a fair contribution. It is far and away beyond that.

Senator THURMOND. Mr. Cooper, I have a letter here signed by several groups opposing this bill—the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the Government Finance Officers Association. Have you had occasion to read this letter?

[The letter referred to follows:]

April 23, 1990

The Honorable
Howard Metzenbaum
Chairman
Subcommittee on Antitrust,
Monopolies and Business Rights
140 Russell Building
Washington, DC 20515

Dear Chairman Metzenbaum:

We are writing to express our opposition to S. 1822, a bill that would set a dangerous precedent and upset the fragile balance that exists among local, state and federal interests under current antitrust law. The bill is a drastic measure that runs counter to federal policy, including the Local Government Antitrust Act of 1984, and case law which have broadened the antitrust protection of local governmental bodies, including airport operators.

S. 1822 is being advanced by certain off-airport rental car companies who seek an unfair competitive advantage. It would amend the Clayton Act to impose new antitrust liability on local and state government-owned and operated airports who charge off-airport car rental companies for the benefits they receive from doing business at airports. By carving out a narrow exemption for this special interest group, the bill would expose local and state government airport operators to expensive and unnecessary litigation.

For over eight years, the issue of off-airport user fees has been thoroughly discussed, debated and litigated. The courts have had the opportunity to address the challenges to the fees made by certain off-airport car rental companies on a number of grounds--equal protection, due process, commerce clause, antitrust, civil rights and various state law provisions. In every case, the federal courts have upheld the right of local and state government airport operators to impose gross receipts user charges on off-airport car rental companies.

Congress has already thoroughly addressed the issue, as well. The Subcommittee on Aviation of the Senate Commerce, Science, and Transportation Committee held a hearing in 1987 and concluded that this was a local government matter in which the federal government should not intervene. The Senate Appropriations Committee also considered the issue but took no legislative action; instead it requested a DOT and FTC study, which concluded that the ease of entry into the off-airport car rental market was sufficient to maintain competition in markets in which an off-airport gross receipts fee was imposed.

The bill currently under consideration represents an effort to find a new forum, the Judiciary Committee, in which to debate the off-airport user fee issue, which is now couched in antitrust terms. S. 1822 would eliminate "state action" immunity for local or regional governmental bodies empowered by state legislation to operate airports. Diluting the state action doctrine for the benefit of a narrow interest group will only encourage other special interests to lobby Congress for exemptions to the law for their particular benefit.

Local governments are seriously concerned about the prospect of antitrust immunity being eroded, thereby threatening our ability to operate public facilities. Likewise, states are concerned that the bill would deny judicially affirmed power to convey to a local or regional governmental entity the authority to carry out a state policy without fear of antitrust liability.

Airports are not-for-profit entities which are required by federal law to set fee structures for users to ensure that the airports are as self-sustaining as possible. To meet this requirement, airports must have the ability to raise revenues from all businesses who profit from the airport in order to finance operations and new development. If one group does not pay its fair share of airport expenses, lost revenues will have to be made up from additional charges to other users or from local taxpayers. As you know, local governments are already straining to fund other programs, and cannot afford to take on additional burdens, merely because some off-airport car rental companies do not care to contribute their fair share towards the expenses of airports whose operation is responsible for the very existence of those companies.

We urge you to bear in mind the far-reaching impact of this legislation on local and state governments and to oppose S. 1822.

Sincerely,

John R. Joyner
Acting Executive Director
National League of Cities

J. Thomas Cochran
J. Thomas Cochran
Executive Director
U.S. Conference of Mayors

John P. Thomas
Executive Director
National Association of Counties

Jeffrey L. Esser
Jeffrey L. Esser
Executive Director
Government Finance
Officers Association

cc: Senate Judiciary
Committee members

Mr. **Cooper**. I have not seen that letter, but I do recall having a difference of opinion with those entities in the passage of certain antitrust exemptions for those bodies, so I can understand where it comes from.

Senator **Thurmond**. Would you mind reading this letter and then submit for the record your answer to this letter?

Mr. **Cooper**. I would be glad to.

[The information of Mr. Cooper follows:]

CFA
Consumer Federation of America

May 15, 1990

Senator Howard Metzenbaum
Chairman
Antitrust, Monopolies and Business
  Rights Subcommittee
Room 224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum,

I again thank you for the opportunity to testify before the Committee on this important consumer issue and for the opportunity to respond to the letter from the agencies representing local governments. The letter is composed of a string of errors of fact and irrelevant policy argument.

Contrary to the letter's most basic and often repeated assertion, my testimony and analysis showed that there are almost no cases in which the structure of gross receipt fees reflects as effort to achieve competitive balance between on and off premise firms.

Contrary to the assertion in the letter, the Department of Transportation report concluded that these fees would raise prices and lower supply but reached no conclusion about the effect of gross receipts fees, refusing to accept the FTC's speculations about the competitive impact of potential entry.

The gross receipts fees imposed by airports on off-premise firms bear no resemblance whatsoever to a fair allocation of airport expenses. Our analysis shows that 95 cents out of every dollar collected by these fees are "contributions" above direct costs. At the same time, there are many users of the airport who do not even cover their own costs.

The legal history of these fees is clear. They pass tests of administrative legality, but they are neither economically rational nor fair. Because of the antitrust exemption enjoyed by the airports the courts cannot apply an economic test and they have said as much.

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These local governments worry about having their antitrust immunities diminished, and well they should. Such immunities are granted by Congress and they can be removed by Congress where they are abused. In this case the authorities have behaved in an irresponsibly anticompetitive and anticonsumer manner and their behavior should be subject to the test of economic rationality and fairness.

These entities are fighting to preserve a privilege granted them by Congress which has been badly abused. The long legal battle over administrative legality only attests to the very deep economic injury that has been imposed on the public by this pricing strategy. Therefore, we urge the Committee to mark-up S. 1822 and send it to the Floor for full Senate consideration.

Sincerely,

Mark Cooper

Mark N. Cooper

Senator **THURMOND**. Thank you very much, Mr. Chairman.

Senator **METZENBAUM**. Thank you very much, Senator Thurmond.

Senator Kohl, you arrived next. We are happy to hear from you, sir.

Senator **KOHL**. Thank you very much, Mr. Chairman.

Mr. Cooper, you are a consumer advocate, and I think we all recognize in our society that ultimately the consumer pays for most everything. That is the way our society works, and perhaps it is the way it should work—pass on costs to the consumer one way or another sooner or later.

I think Mr. Thurmond tried to get at it, but what if you were to set the fee, recognizing that ultimately the airports have to break even and the consumer has to pay for that one way or another? It is not as though we are eliminating a cost by insisting that the off-airport users not be charged. It is not as though that cost will go away. That cost will have to be assumed at some other point.

So what is fair? If you were the judge and you were in a position to decide what the on-airport guys should pay and what the off-airports guys should pay, what would you decide?

Mr. **COOPER**. Well, I will tell you what isn't fair. It isn't fair for it to cost more for me to drive a van through the airport than it does to land and park a plane at the airport.

Senator **KOHL**. Well, that is fine.

Mr. **COOPER**. I know that is not fair.

Senator **KOHL**. That is fine, but what is fair?

Mr. **COOPER**. What is fair is a just and reasonable standard in which you identify the direct costs caused by individual classes of customers. The chairman was getting at that. The direct costs caused by a van going through the airport is a certain amount, the direct costs caused by selling a hot dog, by landing an airplane. And when you have identified the direct costs, you are left with a pool of common and joint costs. This is a straightforward approach to costing.

Senator **KOHL**. My guess is that you are as much an expert as anybody in this country.

Mr. **COOPER**. OK.

Senator **KOHL**. And you have studied the issue and thought about it and you speak with great conviction, which I admire and respect. No one is holding to a statement that is going to become law tomorrow, but we are asking you for your expert opinion. What is fair? What is the number?

Mr. **COOPER**. OK, I will give you two rules at two extremes, OK?

Senator **KOHL**. All right.

Mr. **COOPER**. One rule is an equal markup rule; that is, after you have identified the direct costs of each class of customer, you look at how much more you need and you figure out how to get that money by adding a percentage, an equal percentage, so that if it costs $1 for a van to go through the airport and it costs $10 to land a plane and you can cover your costs by charging an across-the-board 20-percent markup, that is an equal markup rule. That is a very standard practice in regulation. So everyone makes the same contribution as a percentage of their direct costs—one rule.

At the other extreme, there is an equal benefits rule; that is, you figure out the costs of doing each of the operations separately of landing planes, of managing a land-side facility, of having a hotel, and you say this is what it would cost you if this airport was solely doing what you wanted it to do. This is what it would cost you if it were solely doing what you wanted it to do, and everyone gets an equal discount from their stand-alone cost. There is another equity principle.

Now, those rules have been applied in water pricing, in electricity pricing, natural gas pricing, telecommunications pricing, a variety of areas. They are both legitimate, recognized by the courts, but they establish a basis of fairness and equity of treatment.

Senator KOHL. All right. But for us laymen here, we have a 10-percent gross receipts fee which is commonly used across the country for on-airport guys. What would be something that we could hang our hat on from you as an expert? Is it 5 percent, is it 12 percent, is it 7 percent, is it zero percent?

Mr. COOPER. It is going to vary according to the costs caused. I mean, as a consumer advocate, we have to start from costs because that is what competitive markets give us, cost-based prices.

And I wouldn't want Congress to legislate a conclusion, which is exactly why we come with a just and reasonable standard. I have given you two which I can defend in the courts and they have withstood muster in the courts.

What it requires airports to do is to clean up their act, to figure out what each of these services costs and get those costs back from the right people in some reasonable proportion to what it costs them to provide the service. And I would just resist saying make it 5 percent versus 10 percent because that will be wrong in some places, and airports should be able to demonstrate that at an airport where everybody uses vans or everybody has rental stands, the difference should be more or less.

Senator KOHL. So, then, in every market you would have a somewhat different rate?

Mr. COOPER. You would have a rate that reflected the cost structure of the airport.

Senator KOHL. I understand, but if we handled each individual market separately, and car rental companies would go to court and judges would have a chance to look at it and make a decision, then we would have a different kind of a rate all across the country in every different market.

Mr. COOPER. Yes.

Senator KOHL. Most likely, you would if you wanted to be as accurate and precise as you suggest.

Mr. COOPER. Obviously, you wouldn't get five and six decimal places. You would get rules of thumb, but you would have a principle that were adopted by the courts and then a series of applications in individual places, and that is what would come out of the proceeding.

Senator KOHL. All right. Mr. George, do you have some comment on that?

Mr. GEORGE. Yes. The courts have already established that the percentage of gross fee is a reasonable fee, and Mr. Cooper talked about equal benefits. The companies derive benefits from the entire airport—the runways, the taxiways, the facilities, the airplanes that land there as they come in there. You know, they should share in those equal costs. They receive a benefit and those costs are associated to that benefit that they get.

Mr. Cooper. Let me respond. First of all, the courts have found just and reasonable on the basis of an administrative standard, not an economic standard, and the cases—and I have cited the quotes—explicitly say this thing could be completely irrational economically, but it passes the very minimal standards of administrative rationality.

The chairman got at it and the answer was given perfectly. When you walk through the door, you lose your right to a just and reasonable standard, which is the air side, and you get only an administratively reasonable standard. There is no economic standard on the land side of that door.

Second of all, I submit that there is no way that the airlines using those airports are paying 95 percent markup on their fees. So to say equal benefits, sure, we get a benefit because there is a flow of commerce, but I am making a huge contribution when I pay for that off-rental contract.

Senator Metzenbaum. The Chair is going to have to—I am concerned about my second panel because we must adjourn at quarter to 12, unless somebody else can take over and carry on, because I must leave at that time.

Senator Kohl, do you want to——

Senator Kohl. Thank you very much.

Senator Metzenbaum. Senator DeConcini.

Senator DeConcini. Mr. Chairman, in light of that, I will put in a very laudatory statement of Mr. Nielson Bertholf and his background. He has contributed so much to Sky Harbor Airport and transportation in Arizona. I would like the record to show that.

Senator Metzenbaum. It will be included in the record.

[The prepared statement of Senator DeConcini follows:]

STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman, Thank you for your prompt scheduling of this hearing concerning the airport user fees. I am here this morning not only to listen and to ask questions, but to also introduce Mr. Neilson Bertholf, director of aviation for the city of Phoenix, AZ.

"Dutch" Bertholf has managed Sky Harbor International for the last 8 years of his 25 years in commercial airport operations. During his tenure, Sky Harbor has grown to be among the Nation's busiest airports, handling over 484,000 operations daily—an increase of over 20 percent since he arrived in 1982. When Dutch began work at Sky Harbor, only 7.5 million passengers used the facility every year. Today, 21 million passengers use Sky Harbor International annually. Mr. Bertholf is currently supervising construction of a new $250 million terminal which will immediately add 44 gates and will expand to accommodate a total of 76 new gates. Eventually, this facility will accommodate 11 million passengers per year.

Prior to coming to Arizona, Dutch was the manager of the Milwaukee Airport. Earlier in his carreer, Dutch was the assistant airport director for 15 years at Kansas City Airport, Kansas.

Dutch Bertholf has been extremely helpful to myself and my staff in many aviation issues and I commend his judgment to this committee. While I have not taken a firm stand on the legislation immediately before us, I would have to say that I would give great weight to his considered judgment on this issue.

For the record, I would note that I am predisposed to agree with the Federal courts and local governments on the State action doctrine. I was a local official myself at one time. As a county official, I soon learned that Federal financing was more often promised than delivered. Therefore, I learned to do more with less and seek to develop new revenues on my own.

However, I am not insensitive to the claims of the off-airport car companies that they are unfairly singled out and carry too much of the burden already. As for the reasonableness of the burden imposed by such action, I have not yet been shown it is unreasonable. I assure all sides to this issue that I review the record closely before I make my final determination.

Again, thank you Mr. Chairman for your expeditious scheduling of this very important matter.

Mr. Chairman, I do have some questions for Mr. Bertholf and hope to be able to stay long enough to ask them directly to him. I would note that I have an usually tight schedule this morning and I ask that these questions be made part of the record in the event I am required to leave before I have the opportunity to ask them.

Senator DeConcini. I would like to just have a clarification, maybe Mr. Cooper or maybe Mr. Bertholf. As I understand it now, there has been a flood of litigation based on fees that are set by airport authorities on off-airport entrances.

Have there been any cases where the court has ruled that the fee is unreasonable?

Mr. Cooper. Again, the standard is the administrative standard, not an economic standard.

Senator DeConcini. The answer is no?

Mr. Cooper. The answer is absolutely not. They are administratively rational and you have no economic relief.

Senator DeConcini. Do you agree with that?

Mr. Bertholf. Yes, I do. It has been ruled reasonable in five different cases.

Senator DeConcini. There have been five cases tested on this and it has been held reasonable?

Mr. Bertholf. To be reasonable.

Senator DeConcini. So, now, the legislation before us would permit a new standard to be applied to cases similar to those five that have been ruled that it is not unreasonable, the present standard. Is that where we are?

Mr. Cooper. It would apply an economic standard, yes.

Senator DeConcini. It would apply an economic standard?

Mr. Cooper. An economic standard.

Senator DeConcini. The problem I have is that it seems from the cases to be difficult to make an argument that the administrative standard, as you point out, Mr. Cooper, is unreasonable. How do you make such a case? What kind of grounds, what kind of fees would it take to make the standard under the present law without changing it? Can anybody help me?

Mr. Cooper. The simple answer is if you discriminated on the basis of race, age, or sex, the courts would bounce you as high as they possibly could.

Senator DeConcini. That is easy. Now, what about the fact that there is a great divergence? Have these cases gone into the divergency of the amount?

Mr. Cooper. I am not a lawyer, but the thinnest thread of administrative rationality will get you through that administrative test. I mean, I say it somewhat facetiously, but most Americans would be surprised to find how few economic rights, protections, they get under the series of clauses that this has been tried. I mean, the administrative rationale can be very, very thin.

The only other attack which may or may not have gone away would be the question of whether or not there is effective State oversight over the action. That would be one way to argue that there isn't a sufficient State involvement, et cetera, but that doesn't seem to hold much hope either.

Mr. **Berg**. Senator, I am an attorney and I have read these cases and they do go into the reasonableness of the fee, and they go into it based on the interstate commerce clause, based on the equal protection clause. So there is, I think, adequate judicial remedy at the present time, and there are also remedies in the State courts. These are local government entities that are putting in these fees.

Senator **DeConcini**. But there has been no success in challenging any of those fees thus far in the States or any place else?

Mr. **Berg**. That is correct. There was, I think, one case in California because of a nuance of California law where it did find that the—I think it found that the fee was a tax and was not authorized unless certain procedures were followed which hadn't been followed in that case.

Senator **DeConcini**. Mr. Bertholf, let me ask you this question. It is my understanding that off-airport car rental agencies do not object to paying a fee for the use of airport roadways, but only object to paying a percentage of gross receipts.

When the city of Phoenix determined the fee method for Sky Harbor, were the off-airport car agencies able to receive a hearing, or is there a process for them to go through to make their argument administratively or economically, and what other fee methods do you consider that have been rejected?

Mr. **Bertholf**. Senator DeConcini, the history in Phoenix is that the city council, the local government jurisdiction, required us to put together a task force to debate the issue. We did that at length. It took us about 18 months from the beginning of the process until there was a fee enacted by the city council. There was no legal challenge of the fee that was imposed.

Senator **DeConcini**. Were hearings granted?

Mr. **Bertholf**. It was a full, open——

Senator **DeConcini**. Was it available to have the potential person or entity who was going to pay the fee to come and object to it or make an argument for it?

Mr. **Bertholf**. They were full, public hearings, several of them, and the task force included a representative of the off-airport rental cars as part of that decisionmaking process.

Senator **DeConcini**. And what kind of fees, can you remember, can you tell us, were rejected by the task force? Were there some that were suggested that were never implemented?

Mr. **Bertholf**. Basically, the other fee that was suggested was some type of trip fee or some van fee, an escalation of that, and they were rejected through the process and the 7-percent fee was enacted.

Senator **DeConcini**. Thank you. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, gentlemen. We appreciate it. Thank you, Senator Kohl and Senator DeConcini.

Our next panel consists of Paul M. Tschirhart, senior vice president and general counsel of Hertz Corp.; William Lobeck, Jr., president of Thrifty Rent-A-Car System, Tulsa; Harold and Dorothy

Dunlap, Montrose Dollar Rent-A-Car of Montrose, CO; Philip S. Shailer, senior vice president for consumer affairs of Alamo Rent-A-Car, Fort Lauderdale; and Ed Chance, Thrifty Car Rental, Baton Rouge, LA.

I want to say to the group that I notice two Thrifty Car Rental System representatives on our panel. One is the president of the parent company, the other is a licensee. I will say to you, Mr. Chance, in advance that we would ask you to limit your remarks to about 1 or 2 minutes. I am very much concerned about being fair to all the parties at this hearing, and I see that clock is rapidly gaining on me. We do have about 55 minutes.

Our first witness is Mr. Tschirhart of the Hertz Corp.

STATEMENT OF A PANEL CONSISTING OF PAUL M. TSCHIRHART, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, THE HERTZ CORP., PARK RIDGE, NJ; WILLIAM E. LOBECK, JR., VICE CHAIRMAN, THRIFTY RENT-A-CAR SYSTEM, INC., TULSA, OK, HAROLD ROSS DUNLAP, DOLLAR RENT-A-CAR LICENSEE, MONTROSE, CO, ACCOMPANIED BY DOROTHY DUNLAP, PHILIP S. SHAILER, SENIOR VICE PRESIDENT, ALAMO RENT-A-CAR, INC., FORT LAUDERDALE, FL, AND EDWARD CHANCE, THRIFTY RENT-A-CAR LICENSEE, BATON ROUGE, LA

Mr. **Tschirhart**. Thank you, Mr. Chairman. My name is Paul Tschirhart. I am senior vice president and general counsel for The Hertz Corp., a major on-airport company, as you know.

I appear here this morning together with Ms. Andrea Grant and Mr. Bernie Rubel from the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, and Dr. Paul London, a noted economist who has contributed to my comments.

Our initial position is, first of all, we oppose this legislation strenuously and we urge that it not be approved.

Senator **Metzenbaum**. How come you aren't doing very well up in Quad City Airport? You are No. 5, or something.

Mr. **Tschirhart**. We will have to do something about that, Mr. Chairman.

Senator **Metzenbaum**. That is on my time. Go ahead.

Mr. **Tschirhart**. We do believe that this is, in fact, a very local issue, and that the Congress need not involve itself in matters subject to the local political process and, if necessary, to the local judicial process, as so many cases have there been challenged.

We believe that over the years four prior committees have looked at this issue and have elected not to take any action, principally on the basis that it is a local issue, it is something that should be focused in the local political environment.

Beyond that, I think we have to focus on the fact that this legislation is antitrust legislation. It is an amendment to the Clayton Act, and I think some of that focus may have been lost here this morning. The issue before this panel is whether or not to amend the Clayton Act to change long-established precedent under the State action doctrine, submitting conduct of local government authorities to a new cause of action and, in addition to that, doing some damage to the theory of the Local Government's Antitrust Act which is intended to alleviate some of the concerns concerning litigation—extensive, expensive, protracted litigation—in which local governments might be involved.

In that regard, the only reason to take action of this type is if there is a significant problem that requires redress. The question that this committee must ask is, is there a problem here and has it been shown. Does the evidence, as presented, show that there is difficulty?

We have vague complaints about people going out of business. Well, there hasn't been any evidence of that. In fact, we have submitted to this committee a study done by Dr. London that shows that the number of competitors at airports has increased in those years while there have been off-airport fees imposed; that the number of competitors at those airports where fees are imposed has increased, the number of competitors at airports where there are no fees has increased.

In general, there has been no diminishment of competition. And to quote the old bromide, after all, the antitrust laws are intended to protect competition, not competitors. There has not been a diminishment of competition. In a sense, if it ain't broke, why try and fix it? It isn't a problem.

But what the arguments being made before this panel are is that is that it is unfair for some reason for the off-airport car rental companies, who divert business away from the airports and who traditionally have not paid for that access, not paid for that right—is it fair or is it unfair for them to pay gross receipts fees, fees measured by the value of the benefit they derive from the airport? We submit that it is eminently fair.

We believe that the local governments, in general, have done a good job in supplying full recourse, full hearing rights to the individuals, and that at a local level those decisions have been made appropriately and in recognition of the fact that there is great value to the off-airport business, great value to the access of deplaning passengers.

Consistent with the charges for access that are paid by on-airport companies such as Hertz, the off-airport companies, too, should pay a percentage of their gross receipts. That is the appropriate measurement of value, and I think we should emphasize that these fees are being imposed on the companies for the measurement of value they derive from the airport. The fees are not being imposed on passengers by the airports, and that is a misconception commonly repeated in the testimony, in the prepared statements being submitted today, and in other answers given earlier today.

These fees are not imposed on customers, except by the companies themselves. These fees are imposed by airports on on-airport companies as a percentage of gross and off-airport companies as a percentage of gross. Those fees, in turn, become part of the cost of doing business built into the rate structure.

Senator METZENBAUM. Thank you very much, Mr. Tschirhart.

Mr. TSCHIRHART. Thank you. We do oppose this legislation. Thank you.

Senator METZENBAUM. I gathered that. [Laughter.]

Your entire statement will be included in the record.

Mr. TSCHIRHART. Thank you.

[The prepared statement and attachments of Mr. Tschirhart follow:]

The Hertz Corporation
225 Brae Boulevard, Park Ridge, NJ 07656 · 0713

STATEMENT

of

THE HERTZ CORPORATION

on

S. 1822
"FAIR AIRPORT ACCESS ASSURANCE ACT"

before the

SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES AND BUSINESS RIGHTS,

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

April 24, 1990

Mr. Chairman:

I am Paul M. Tschirhart, Senior Vice President and General Counsel of The Hertz Corporation. I am here today to discuss S. 1822, a bill intended to prevent airport authorities from imposing gross receipts or privilege fees on off-airport car rental companies. Although S. 1822 has been cast as an amendment to the Clayton Act (15 U.S.C. §§ 12 *et seq.*), it is essentially the same special interest legislation that four committees of the Congress have considered since 1987 and on which they have chosen to take no action. Each of those four committees concluded that such legislation would unnecessarily involve Congress in purely state and local governmental matters. For the reasons I will discuss today, The Hertz Corporation believes that S. 1822 reflects unsound public policy and urges the Subcommittee to reject it.

I. Conclusions

After reviewing S. 1822, H.R. 3325, a similar bill pending in the House of Representatives, and the bills introduced in the last Congress, Hertz believes that the Subcommittee should reject this legislation for the following reasons:

- Fees measured by a percentage of gross receipts fairly relate to the benefits that off-airport firms derive from access to deplaning passengers.

- The courts have repeatedly upheld the lawfulness of such fees.

- Over the past 2-1/2 years, four committees of Congress have carefully examined the issue of airport privilege fees. Each committee found the issue of fees to be a local matter not warranting Federal intervention.

- S. 1822 would seriously erode the "state action" doctrine for one particular industry and would do so in an attempt to regulate conduct that Congress has traditionally not believed that the antitrust laws should address.

- There is no evidence that the imposition of gross receipts fees reduces competition.

- Adoption of S. 1822 would be inconsistent with National Transportation Policy; and

- Airport privilege fees are an important and legitimate source of revenue for state and local airport authorities and properly allocate the burden of paying for the airports to those who benefit from them.

II. Background

A. The Car Rental Industry

It is not possible to understand S. 1822 fully unless one examines the bill in the context of the history of (1) the car rental industry and (2) the prior airport privilege fee legislation.

1. Presence on Airports

Thirty years ago the car rental industry was very different from today. There were only a few companies, and each operated on the airport property. Typically a traveler would arrive in a city without a reservation, shop the counters for the best deal, and then walk to the car which was parked in front of the terminal. Thus, the in-terminal presence was very important; it provided access to deplaning passengers.

For this economic benefit a car rental company has customarily paid about 10 percent of its gross receipts to the airport authority. A percentage of gross receipts has been the usual method of fee measurement used by all airports for concession payments. This gross receipts fee for car rental firms has been paid in addition to the rent paid for counters, parking spaces, utilities and advertising. Car rental companies operating on the airport property today continue to pay all of these fees.

2. Impact of Airline Deregulation

As Congress is well aware, deregulation of the airline industry in 1978 brought significant changes in air travel and the car rental industry as well. With the entrance of new carriers and greater competition, the American public reacted to the lower fares by flying more frequently -- for business and for leisure. More American families were flying to Orlando, renting a car and vacationing at Disney World rather than driving the family car all the way from home.

As air travel and car rental traffic increased, two significant events occurred. First, several car rental companies began operating at locations immediately adjacent to the airport property. These "off-airport" companies began picking up deplaning passengers at the curb in front of the terminal and busing them to their service centers next to the airport.

At the same time, travelers complained to airport authorities that they did not like parking their cars in remote lots while car rental companies occupied the spaces right in front of the terminal. Accordingly, airport authorities moved the car rental firms out of those parking spaces and forced them to bus their customers to service centers that were remote from the terminal but still on airport property.

As a result of these changes, the operations of on-airport and off-airport firms became very similar. At most major airports today, both types of firms bus customers to remote locations from which the cars are rented. A customer usually has no idea if he or she is on or off the airport property. The convenience of having the car out in front is gone. The bus ride may be 5 minutes to an on-airport location or 6 minutes to an off-airport location; it makes no difference to the renter.

3. Diminished Value of Counters

In addition, the value of the in-terminal presence has diminished. In contrast to the pre-1978 period, almost every renter now arrives at his destination with a reservation in hand. He has either (1) responded to national advertising from one of the many on- or off-airport firms and called its central reservation system -- its 800 number, or (2) had his travel agent make the reservation. More than 92 percent of all renters now have a reservation in hand when they arrive at the airport.

In addition, to expedite the rental transaction itself, the on-airport car rental companies offer frequent-user programs that permit the customer to by-pass the in-terminal counter completely, go directly to the curb, and board the bus. Moreover, in many airports nationwide off-airport car rental firms are permitted to advertise and/or have a telephone in the terminal -- a direct link with their off-airport service centers.

Thus, for Hertz' "walk-up" business, rentals made without a prior reservation, now represents less than 10 percent of its airport business. Clearly the value of the counter and in-terminal presence has diminished significantly during the past twelve years.

4. Access to Passengers

Despite these changes in the car rental business, until recently one thing remained the same: On-airport car rental firms continued to pay the 10 percent fee for the economic benefit derived from having access to the deplaning passengers, and off-airport operators paid none. While both types of firms benefited from having such access, only the on-airport companies paid for the privilege of doing business at the airport. Those payments are used to help support the airport --the entire airport -- its operation, maintenance and capital development.

B. Off-Airport Fees

1. Imposition of the Fees

As the financial needs of airports have increased over the years, local airport authorities have looked for ways to meet their revenue requirements, remain self-sustaining and not become a burden on the local taxing jurisdiction. About 5 or 6 years ago, some airports began imposing privilege fees on car rental companies operating off-airport.

The airport authorities reasoned that the off-airport car rental companies were deriving almost 100 percent of their income from having access to deplaning passengers; and that those firms should pay for the economic benefit obtained. In short, they should pay their fair share for supporting the airport.

In addition, because the off-airport firms were taking business away from on-airport firms, the airports were receiving less money from on-airport car rental concessionaires. The airport authorities imposed the fees on off-airport companies in part to compensate for these losses.

2. Challenge to the Fees

a. Judicial Challenge

Off-airport car rental companies have repeatedly challenged the legal right of the airport authorities to impose the fees. In every instance that right has been upheld against claims made under (i) the equal protection clause of the Fourteenth Amendment, (ii) the Commerce clause, and (iii) the Sherman Act.

(i) Equal Protection

Off-airport rental firms have claimed that the gross receipts fee violates the equal protection clause because it arbitrarily creates two classes that receive different treatment: (a) off-airport car rental business and (b) all other airport businesses that use vehicles to pick up and discharge customers at the airport.

In Alamo Rent-A-Car v. Sarasota-Manatee Airport Authority,[1/] the U.S. Court of Appeals rejected this claim. It recognized that car rental firms and other off-airport companies are engaged in different types of businesses and thus merited different treatment. In Airline Car Rental, Inc. v. Shreveport Airport Authority,[2/] the court reached a similar conclusion. It held that a gross receipts fee on off-airport rental firms has the legitimate objective of deterring on-airport firms from leaving the airport, thus protecting the airport's revenue base.

1/ 825 F.2d 367 (11th Cir. 1987), cert. denied, 108 S.Ct. 1022 (1988).

2/ 667 F.Supp. (W.D. La 1987).

Off-airport rental firms have also claimed that a gross receipts fee violates the equal protection clause because it treats off-airport car rental companies in a manner similar to that of differently situated on-airport car rental companies. In Alamo Rent-A-Car, Inc., Airline Car Rental, General Rent-A-Car v. Carol A. Roberts,[3] and Club Car Rentals of Gainesville, Inc. v. The City of Gainesville,[4] the courts rejected this claim as well. In reaching their decision, the courts relied on a Supreme Court decision which held that states and their political subdivisions are to be given wide latitude in regulating their local economies.[5] Local regulations that do not violate a fundamental right, such as the right to vote or freedom of speech, or do not employ a suspect classification (classifications based on race, national origin or sex) are presumed to be valid and will be upheld if they are rationally related to a legitimate state interest. Thus, in applying this test, the courts have unanimously held that raising revenue is a legitimate and valid governmental interest and that airport privilege fees are rationally related to that interest.

3/ Case No. 87-8345 Civ-Marcus (S.D. Fl Sept. 15, 1988) (Slip Op.).

4/ No. 85-177-MMP (N.D. Fl. May 5, 1988) (Slip Op.).

5/ See City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985).

(ii) Commerce Clause

Off-airport car rental firms have asserted that a gross receipts fee violates the interstate commerce clause because it bears no reasonable relationship to its stated purpose and because it burdens interstate travelers. The courts have not accepted either claim. In General Rent-A-Car, the court held that (1) even though the fee was substantially greater than the actual cost to the county for providing roads at the airport, that fact, by itself did not negate the reasonableness of the fee; (2) the user fee was directly related to the volume of business generated by the airport facility; and (3) there was no evidence suggesting that the fee would cause interstate travelers to fly to other airports or cause deplaning passengers to choose to rent from an on-airport rather than from an off-airport company.

(iii) Sherman Act

Off-airport car rental companies have also alleged -- unsuccessfully -- that the airports have violated the Sherman Antitrust Act. In Airline Car Rental, the court held that so long as an airport authority operates pursuant to a state statute that indicates the state's desire "to vest control of airport management" in a local authority, its imposition of access fees is not subject to the constraints of the Federal antitrust laws. In essence, the court applied the state action doctrine to ensure that judgments would be made by local authorities based on the merits of the issue, not on fear of protracted and expensive litigation.

b. Congressional Action

(i) Complete Prohibition

When the off-airport car rental firms failed in the courts, they turned to the Congress and sought a complete prohibition on the imposition of such fees. However, the House Committee on Public Works and Transportation declined to involve itself in an area that Members determined was strictly local.[6/]

(ii) Fees Based on Use

When their effort to seek an outright prohibition failed, the off-airport firms changed their approach. Identical bills, H.R. 3764 and S. 1834, introduced in the last Congress, would have prohibited airport authorities from imposing gross receipts fees on off-airport car rental firms; however, those bills would not have prohibited such authorities from imposing reasonable and not unjustly discriminatory fees based on use of airport roadways and facilities built to meet the off-airport firms' needs. Put simply, under those bills and H.R. 3325 now pending in the House, airport authorities would be limited to imposing fees that recoup the cost of (1) the airport roadway worn down by the buses of the off-airport firms and (2) a canopy built to keep waiting renters dry during inclement weather. The off-airport companies support

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6/ House Report 100-123, Part 2, on "Airport and Airway Improvement Amendments of 1987" (H.R. 2310), at 24 (June, 1987).

these bills and are evidently now willing to pay something -- what they call "reasonable fees" -- fees based only on use of particular facilities, not on economic value derived.

To understand this difference, the Subcommittee should compare the possible payments. For example, under the fees based on use, an off-airport car rental firm might pay to the airport about $5,000 for use of the roadway and canopy, regardless of its revenues from airport-derived business; in contrast, if a 7 percent gross receipts fee were imposed on revenues of $4 million, the firm would pay $280,000 for the economic value derived. Note that if the off-airport firm paid 7 percent, the on-airport firm would still pay more -- 10 percent. In short, fairness requires that fees be based on benefit, not simply a truncated concept of use.

Following review in the last Congress of H.R. 3764, which would have limited fees only to those that are "reasonable and not unjustly discriminatory" based on use, the bipartisan leadership of the House Committee on Public Works and Transportation circulated a "Dear Colleague" letter in opposition to the bill. It stated that "[W]e believe this issue is first and foremost a local concern best left to local airport authorities."[7/]

In addition, the Members noted that (1) government-operated airports must retain the ability to raise needed revenues;

[7/] A copy of the "Dear Colleague" letter on H.R.3764 (March 9, 1988) is attached. See Attachment A.

(2) Congress should not eliminate or jeopardize these local airport revenues unless it is prepared to replace them with Federal funds; (3) the Federal Government has never regulated the fees airports charge off-airport businesses or non-aeronautical businesses located on the airport; (4) the terms "reasonable" and not "unjustly discriminatory" are not precise concepts, and many years of litigation would be required to establish a uniform definition; and finally, (5) if payments for economic benefits cannot be charged by the airports, costs for supporting the airports will be shifted unfairly from one group of airport customers to another, resulting in a subsidy for a special group of off-airport businesses.

In September, 1987, the Subcommittee on Aviation of the Senate Committee on Commerce, Science and Transportation held a hearing on S. 1834, a bill which would have only permitted airport fees based on use. The Members of that Subcommittee repeatedly indicated that airport privilege fees are a local matter and recognized that there had been no showing of a need for Federal intervention. Accordingly, no action was taken.

Following these rejections by the substantive committees, proponents of the legislation attempted to have the Appropriations Committees limit the rights of airport authorities. However, the House Appropriations Committee chose not to take action. The Senate Appropriations Committee thoroughly reviewed the issue, and also determined no legislative action was warranted. The Committee, however, directed the Department of Transportation to study the issue.

c. DOT Report

Last year DOT completed that study, "A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies." The 91-page report, prepared in conjunction with the Federal Trade Commission's Bureau of Economics, determined that the imposition of gross receipts fees, coupled with the potential for easy market entry, should not lead to a diminution of competition in the car rental industry.

III. S. 1822

A. "State Action" Doctrine

S. 1822, introduced last Fall, represents, in a different context, yet another attempt to limit the right of local airport authorities to impose gross receipts fees on off-airport car rental firms. The bill would amend the Clayton Act by creating a new cause of action. However, as discussed in a legal memorandum prepared by our counsel,[8] it is not consistent with traditional antitrust causes of action.

In addition, it would upset the delicate balance between the legitimate interests of state and local governments to govern their constituents and the Federal policy to promote competition. The proposed legislation would seriously erode the "state action" doctrine articulated in two well known cases, Parker v. Brown, 317 U.S. 342 (1943), and Town of Hallie v. City of Eau Claire, 471 U.S. 34 (1985). In those cases and others, the Supreme Court held that the antitrust laws do not apply to state actions or actions taken by a municipality pursuant to a state policy. S. 1822 would make the targeted gross receipts fee programs actionable regardless of whether the programs were authorized by state law.

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[8] "Analysis of the 'Antitrust' Provisions of S. 1822 and H.R. 3325," prepared for The Hertz Corporation by Verner, Liipfert, Bernhard, McPherson and Hand (April 24, 1990). See Attachment B.

This Subcommittee and the Congress should not make such a fundamental change in the antitrust law at the behest of the off-airport car rental industry. Such a change is not warranted, particularly because there has been no showing that the imposition of gross receipts fees reduces competition in the car rental industry. In fact, the DOT report did not find such a diminution, and it is generally believed that competition is strong in the industry.[9]

Moreover, if Congress decides to undercut the "state action" doctrine on behalf of this industry, that action would serve as a clear precedent for other industries and an invitation for many of them to seek relief from the Congress. It would be poor public policy to legislate change in the important state action doctrine and authorize Federal intrusion into local matters; in the circumstances here, the conduct is traditionally not of concern under the antitrust laws and there is no economic justification for creating a special exception.

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[9] London, Paul A., "Competition in the Car Rental Industry - The Issue of Airport Privilege Fees" prepared for the Hertz Corporation (December 22, 1988). London, Paul A., "Competition and Airport Privilege Fees: A Review of Developments During 1989" (April 24, 1990). See Attachment C.

B. Ratemaking Proceeding

In addition, S. 1822 would require a judicial review of the reasonableness of the fees imposed. The establishment of a "reasonable" fee is not a typical function for a court or an antitrust proceeding. It would be a task comparable to a complex ratemaking proceeding by a public utility regulatory agency. Thus, the threat of such litigation, under a cause of action created by S. 1822, would have a chilling effect on local airport authorities considering such fees, and it would likely dissuade them from imposing any fees.

IV. Competition

Off-airport car rental firms contend that payment of gross receipts fees will cause them financial difficulty and thereby weaken competition in the car rental industry. However, there has been no showing that gross receipts fees have reduced competition. The DOT-FTC report found that the industry is highly competitive. In addition, a report prepared for Hertz by Dr. Paul A. London, a noted economist, reviewed competition at airports with and without gross receipts fees on off-airport companies.[10]

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[10] London, Paul A., "Competition and Airport Privilege Fees: A Review of Developments During 1989," prepared for The Hertz Corporation (April 24, 1990).

Dr. London found that (1) data covering both large and small airports show that airports which levy privilege fees are adding car rental firms at a rate at least as fast as airports that do not impose such fees; and (2) both new off-airport and on-airport competitors continue to enter the business.

It can only be concluded from this study that the car rental industry is vigorously competitive, and the imposition, at about 80 airports, of gross receipts fees on off-airport firms deriving their income from the airports, is not diminishing that competition.

V. Off-Airport Firms

A. "Small" Firm Contentions

Off-airport firms would have the Subcommittee and the public believe that they are small "mom and pop" operations competing, at a severe disadvantage, against much larger on-airport companies. This is not the case.

Many of the off-airport companies are large companies with substantial fleets and annual revenues over $100 million.[11/] They benefit from national advertising in trade journals, travel magazines, newspapers, radio and television; they have national reservation systems (800 telephone numbers) and appear on the computer reservation systems used by travel agents nationwide. Firms of this size are able to compete with on-airport companies. In fact, because some of the off-airport firms do not operate in

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[11/] Business Travel News, 1988 Business Travel Survey (June 6, 1988).

all 50 states but rather only in selected markets, their fleets and revenues are, in key locations, often equal to or larger than on-airport firms.

The mantle of "small business" is politically appealing. Licensee groups have also argued that because they are small, they do not have a strong political voice at the local level. However, these independent businessmen usually have a greater influence with local airport boards or commissions than do on-airport firms. They are members of the local communities, and certainly can be vigorous and effective proponents of their position.

Even the small car rental firms should pay their fair share of support for the airport. They derive economic benefit from the airport; simply because they are small, such benefit should not be free. A fee based upon a percentage of gross receipts automatically provides that smaller firms pay less and reflects fairly the value they derive.

B. Subsidy

An airport's costs, however composed and measured, must be paid for from its source of revenue -- Federal, state and local grants, air carriers and concessionaires at the airport. If off-airport car rental firms receiving the economic benefits from passenger traffic at the airport do not pay for that benefit, then airport costs will be transferred to other airport users. Users of on-airport car rental firms and airline passengers will be forced to pay higher ticket prices and will subsidize the owners and users of off-airport car rental firms. It is far more equitable for all companies, large and small, receiving value from the airport to pay their fair share for that benefit.

VI. National Transportation Policy

Recently, the DOT issued the National Transportation Policy, "Moving America, New Directions, New Opportunities."[12] That statement recommended restructuring of the transportation partnership to give other levels of government and the private sector the tools they need to address critical requirements in transportation. Specifically, DOT stated:

> In addition, State and local governments and the private sector need greater flexibility to employ innovative financing techniques, such as benefit assessments, joint development rights, and other means of capturing the value of transportation investments in fees assessed on the private firms that benefit from transportation services or facilities.[13]

Thus, the Administration has called for greater financial participation by state and local governments in maintaining and expanding the nation's transportation system. The imposition of gross receipts fees on those firms that benefit from the transportation facilities, such as the airports, is wholly consistent with that policy.

Because of the budget deficit, the Federal Government will have less money to spend on the nation's airports, and that fact, whether by necessity or design, will compel the airports to fend more and more for themselves. S. 1822 would significantly and unnecessarily encumber a fair and equitable means of raising self-sustaining revenues.

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[12] U.S. Department of Transportation, "Moving America, New Directions, New Opportunities," A Statement of National Transportation Policy, Strategies for Action (February, 1990).

[13] Ibid at 5. Emphasis added.

VII. Conclusion

In sum, S. 1822 would unnecessarily involve the Federal Government in a purely local issue. Local airport authorities should retain the right to impose gross receipts fees on off-airport firms that derive their income from airport facilities. Moreover, there is no evidence that such fees are injuring consumers by reducing competition.

In addition, S. 1822 would create a new cause of action outside of traditional antitrust principles; in the process, it would erode the "state action" doctrine for one particular segment of an industry. There is no need for such a fundamental change in the Federal antitrust laws.

The courts have rejected challenges to the assessment of such fees by the airports. Four Congressional Committees have previously reviewed this issue, and none has found that Federal action was warranted.

Accordingly, The Hertz Corporation respectfully requests that the Subcommittee reject S. 1822.

Thank you very much.

ATTACHMENT A

Congreſs of the United States
Washington, D.C. 20515

March 9, 1988

Dear Colleague:

We wish to express our concerns about H.R. 3764, a bill that would impose federal standards on the ability of airports to charge fees to off-airport companies, such as car rental firms, hotels, motels, and parking lots, which operate courtesy vehicles on the airport to pick up and discharge their customers. We believe this issue is first and foremost a local concern best left to local airport authorities.

Local and state government-operated airports must retain the ability to raise needed revenues from companies which, whether located on or off the airport, use airport facilities to provide essential, for-profit services at the airport. In fact, federal law already requires airports to charge sufficient fees and rentals for the facilities and services provided airport users to make the airport self-supporting. Congress should not eliminate or jeopardize these local airport revenues unless we are prepared to replace them with federal funds.

The Federal government has never regulated the fees airports charge the off-airport businesses covered by H.R. 3764. Indeed, the Federal government does not even regulate the fees charged to non-aeronautical businesses located on the airport.

H.R. 3764 would allow the courts to review the fees assessed to off-airport companies to determine whether these fees are "reasonable" and not "unjustly discriminatory." As anyone who has ever been involved in utility rate regulation knows, "reasonable" and "unjustly discriminatory" are not precise concepts. Extensive litigation is frequently required to determine whether particular rates are either unreasonable or discriminatory. Under H.R. 3764, these determinations will be made by courts throughout the country and it is likely that different courts will reach different conclusions as to whether particular charges are proper. It may be years before higher courts can resolve these differences.

To the extent that court review under H.R. 3764 would prevent airports from recovering off-airport companies' share of the costs and benefits of airport facilities, costs will be shifted unfairly from one group of airport customers to another, resulting in a subsidy for a special group of off-airport businesses.

In sum, we strongly oppose the legislation which would impose federal standards on the fees charged by airports to a wide variety of businesses. These fees should be set by the local officials who are responsible to local taxpayers for the financing of airport operations and maintenance. We ask you to fully weigh these problems in deciding your position on H.R. 3764.

Sincerely,

John Paul
JOHN PAUL HAMMERSCHMIDT
Ranking Republican Member
Committee on Public Works
and Transportation

Newt Gingrich
NEWT GINGRICH, M.C.

Daniel K. Akaka
DANIEL K. AKAKA, M.C.

Dan Glickman
DAN GLICKMAN, M.C.

Bob Stump
BOB STUMP, M.C.

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ATTACHMENT B

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ANALYSIS OF THE "ANTITRUST" PROVISIONS OF S. 1822 AND H.R. 3325

I. INTRODUCTION AND SUMMARY

S. 1822 and H.R. 3325 would amend the U.S. antitrust laws to authorize, among other things, private injunctive relief against a local airport authority (1) if such authority imposes an "unreasonable and unjustly discriminatory" access fee on off-airport businesses that serve the airport and its passenger traffic, and (2) if the effect of the fee may be "to substantially lessen competition or tend to create a monopoly." The objective of the legislation is to protect off-airport car rental firms from the kinds of fees now paid by on-airport car rental firms -- even though both serve and benefit from the same passenger traffic emanating from airports.

We have reviewed the antitrust bases and implications of the proposed legislation. Our conclusions are that S. 1822 and H.R. 3325 do not conform to traditional antitrust requirements as reflected in other statutes and relevant case law and that they lack empirical and economic justification. They do not merely apply the antitrust laws to the particular situation here, but rather they give special treatment to a class of participants in an industry. In summary,

- The proposed legislation creates new causes of action specifically tailored for off-airport car rental firms that would, in probable effect, prevent local airport authorities from imposing gross receipts fees on firms deriving economic benefit from the airport.
- The new "antitrust" cause of action would eliminate any requirement that plaintiff prove a traditional antitrust case. Another section would artificially limit fees so that off-airport firms would receive free benefits.
- Under current antitrust law, and consistent with the Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34-36 ("LGAA"), an off-airport firm could sue an airport authority for injunctive relief to challenge any action not authorized by state law or policy. Thus, no new legislation would appear to be appropriate.
- The proposed legislation gives off-airport car rental firms a special exemption from the "state action doctrine" -- a doctrine that bars application of the antitrust laws to an action taken pursuant to state policy. The legislation threatens a significant erosion of the state action doctrine and lays the foundation for extensive federal intrusion into traditional areas of local government action and revenue policy.
- The proposed legislation clashes with the economic premises of the antitrust laws. Those laws would require an unbiased examination of the costs, benefits and economic effects of a particular fee. But the proposed legislation artificially constrains the factors used to determine the reasonableness of a fee.
- There is no empirical or economic justification for any special antitrust treatment of off-airport car firms. A key study explicitly disclaims the conclusion that airport fees imposed on off-airport firms harm competition.
- The proposed legislation is likely to engender complex and costly litigation -- a prospect that would generally discourage fees for off-airport businesses. It would effectively perpetuate the current subsidization of off-airport firms by on-airport firms.

A detailed discussion of these conclusions is set forth below.

II. S. 1822 AND H.R. 3325

A. Specific Provisions

1. Clayton Act Amendment

S. 1822, reproduced in the margin,[1] would amend the Clayton Act by making it unlawful for any local government authority operating an airport that receives federal financial support to impose "an unreasonable and unjustly discriminatory tax, fee, or condition" on "commercial users of such airport" that are non-tenants and are "non-aeronautical," where its effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce" -- whether or not the tax, fee or condition is authorized by state law. Its purpose is to discourage airport authorities from imposing gross receipts fees on off-airport car rental firms. Section 3 of H.R. 3325 proposes an amendment to the Clayton Act that is substantially identical to that of S. 1822. Neither bill would provide a specific remedy for violation of the "antitrust liability" sections. Such a violation would ostensibly trigger whatever remedies are available under existing law.

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[1] S. 1822

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANTITRUST LIABILITY OF LOCAL GOVERNMENTS

The Clayton Act (15 U.S.C. 12 et seq) is amended by redesignating section 27, and any reference to such section, as section 28 and inserting after section 26 the following new section:

"Sec. 27. It shall be unlawful for any city, county, parish, town, township, village, or other general or special function governmental unit that owns or operates an airport that receives Federal assistance or issues airport improvement bonds the interest in which is tax exempt under the Internal Revenue Code of 19XX to impose an unreasonable and unjustly discriminatory tax, fee, or condition on non-tenant, non-aeronautical, commercial users of such airport, where the effect of such tax, fee, or condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce, whether or not such tax, fee, or condition is authorized by State law."

SECTION 2. LIMITATION ON APPLICABILITY TO CIVIL ACTIONS

This Act and amendments made by this Act shall not apply to any civil action in which a judgment has been entered on or before the date of enactment of this Act.

2. Fees Based on Use of Particular Facilities

In addition, H.R. 3325 contains a "Section 2" entitled "Ground Transportation Services," reproduced in the margin,[2] which, inter alia, declares that off-airport firms have a right of access over airport roadways to passenger pickup and discharge facilities and that an airport may charge "reasonable and not unjustly discriminatory" fees to off-airport firms that are "related to use of the roadways and facilities built primarily to meet such firms' needs." This section is described in more detail herein.

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[2] Section 2 of H.R. 3325 provides in relevant part as follows:

> SEC. 2. GROUND TRANSPORTATION SERVICES.
>
> * * *
>
> (b) RIGHT OF ACCESS TO COURTESY VEHICLES.--Air passengers who are customers of off-airport operators (including any rental vehicle, parking lot, hotel, motel, resort, amusement park, theme park, or other business) shall have the right to access to courtesy vehicles provided by those operators, and such off-airport operators shall have the right of access over the airport roadways to public passenger pickup and discharge areas designated on a fair and reasonable basis.
>
> (c) AIRPORT ACCESS FEES.--An owner or operator of an airport may charge fees to off-airport operators provided such fees are reasonable and not unjustly discriminatory and

(continued...)

B. Impact on Antitrust Laws

1. The Local Government Antitrust Act

Presently, a person claiming injury has the right to sue a local government and its officers for injunctive relief to curtail a violation of the antitrust laws. The LGAA, however, provides that no damages, interest on damages, costs or attorneys fees may be recovered under Sections 4, 4(a) or 4(c) of the Clayton Act from any local government, official or employee or from any person based upon any employee action directed by such a local government, official or employee. The LGAA did not limit the substantive matters giving rise to antitrust liability; and

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2/(...continued) are related to the use of the roadways and facilities built primarily to meet such operator's special needs. The fee shall compensate any airport owner or operator for costs allocated to providing such special needs as roadways and pick-up and drop-off areas to defray any other costs related to usage.

(d) ENFORCEMENT.--Any person aggrieved by a violation of this section, or any regulation issued pursuant thereto, may bring a civil action in any court of competent jurisdiction for legal or equitable relief as will effectuate the objective of this section.

so injunctive relief remains available if the required elements of liability and injury are proved.

The proposed legislation does not appear to change the nature of the antitrust relief available. The remarks of Senator Breaux, introducing S. 1822, state that its intent is simply to "allow smaller, off-airport companies to seek an injunction against an airport under antitrust laws . . . ." Cong. Rec., Oct. 31, 1989, at S. 14443. (If there is any doubt about this aspect of the legislation, steps should be taken to clarify it.) The proposed legislation would, however, enlarge the substantive liability of local authorities and add new uncertainties to local administration contrary to the Congressional intent in enacting the LGAA.

2. The State Action Doctrine

The proposed legislation also addresses the "state action" doctrine, articulated in Parker v. Brown, 317 U.S. 341 (1943) and Town of Hallie v. City of Eau Claire, 471 U.S. 34 (1985), and makes it inapplicable to suits by off-airport firms. In these and other cases, the Supreme Court held that (1) the antitrust laws do not reach state actions or actions of others undertaken pursuant to a clearly articulated state policy; and further, that (2) where the acts of a municipality are involved, there is no need for the kind of "active state supervision" that would be required to invoke the doctrine if the acts were those of a private person. When the doctrine applies, even injunctive relief is not available. However, the proposed legislation specifically makes the targeted activities unlawful "whether or not . . . authorized by State law." Thus, it intends that even state-authorized activities affecting off-airport businesses be subject to private suits for injunctive relief.

3. The Non-Antitrust Provisions

Section 2 of H.R. 3325 begins as a declaration of rights for air passengers, shifts to such a declaration for off-airport businesses, and concludes by creating a private civil action to enforce any violation of the section. Subsection 2(a) requires the airport to provide conspicuous information as to all ground transportation services available. Subsection 2(b) gives passengers the right of access to courtesy vehicles and gives "off-airport operators" the right of access over roadways to passenger pickup and discharge areas "designated on a fair and reasonable basis." Subsection 2(c) states that the airport may charge fees to "off-airport operators" provided that such fees are "reasonable and not unjustly discriminatory and are related to the use of the facilities and roadways built primarily to meet such operators special needs" and goes on to constrain the basis of such fees to the airport's costs for "such special needs as roadways and pick-up and drop-off areas." Subsection 2(d) allows "any person aggrieved" by violation of this section or "any regulation issued" pursuant to it to bring a civil action "for legal or equitable relief as will effectuate the objective of this section."

Overall, Section 2 would grant off-airport rental firms rights to have information regarding their services displayed and access to all airport passengers through the use of courtesy vehicles and roads; but it would require such firms to pay fees based only on specific costs rather than, as in the case of the other rental firms, the benefits such firms receive by reason of the access to the passenger traffic that is guaranteed by the proposed legislation. This is not an "antitrust" section, and there is no requirement to show any impact on competition or any further proof of wrong.

Moreover, by expressly providing for "legal" relief as a form of remedy, the proposed legislation would expose local governmental authorities to the monetary judgments and associated costs and fees that the LGAA sought to prevent in the area of antitrust violations -- even without proof of an anticompetitive effect. The section is thus a unique declaration of benefits for off-airport car rental firms with no corresponding obligation to pay for them and with no acknowledgement of the prior determinations of the Congress, reflected in the LGAA, as to the limitations on local governmental liability.

* * * *

In summary, the proposed legislation would:

(a) eliminate the application of the state action doctrine to specific matters involving airport fees and access;

(b) with respect to the non-antitrust provisions of H.R. 3325, create a new private cause of action where airport fees did not conform to the requirements set forth in the statute; and

(c) as more fully described below, create a new, substantive antitrust offense that would impose liability without requiring traditional elements of antitrust proof.

III. THE BILLS WOULD CREATE A NEW KIND OF SUBSTANTIVE ANTITRUST LIABILITY FOR LOCAL AUTHORITIES

The proposed legislation would not merely make local authorities subject to injunctive relief for antitrust violations involving fees charged to off-airport businesses. Such relief is already available under the LGAA without any additional legislation, subject to the state action doctrine. Rather the two bills would proscribe certain conduct as an "antitrust" offense, but would require no proof of certain elements that are ordinarily prerequisites for antitrust liability.

A. Section 1 of the Sherman Act

Section 1 of the Sherman Act declares illegal every "contract, combination . . . or conspiracy in restraint of trade." Under a long-standing interpretation, only contracts and concerted actions that "unreasonably" restrain competition are held to be prohibited. See National Society of Professional Engineers v. U.S., 438 U.S. 679 (1978); Standard Oil Co. v. United States, 221 U.S. 1, 58 (1911).[3]

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[3] Actions involving price-fixing, market or customer allocations, classic "group boycotts" (wherein competitors agree upon some means to deny another competitor access to the market) and so-called "tying" arrangements are often said to be "per se" violations of the law. That is, once proved, they are declared illegal without further judicial inquiry as to whether they may be "reasonable" in the (continued...)

Solely unilateral conduct, regardless of its anticompetitive effects, is not prohibited by Section 1. Contractor Utility Sales Co. v. Certain-Teed Products Corp., 638 F.2d 1061, 1074 (7th Cir. 1981); Edward J. Sweeny & Sons Inc. v. Texaco, Inc., 637 F.2d 105, 110 (3rd Cir.), cert. denied, 451 U.S. 911 (1980).

At the outset, it should be noted that the proposed legislation attacks the independent, unilateral action of a local government authority. There is no requirement that the plaintiff prove that there was a "horizontal" combination or conspiracy between the local authority and any of the plaintiff's competitors to set fees or to limit access to the airport. Rather, it attacks action that may be entirely that of the local

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3/(...continued)
circumstances. See Northern Pacific Ry. Co. v. United States, 356 U.S. 1 (1958).

There are, on the other hand, concerted activities that must be tested by the so-called "rule of reason." Such matters as exclusive dealing arrangements, long-term all-requirements contracts, non-competition clauses in sales or employment agreements, and "unclassic" boycotts (other agreements to restrict a third party's actions) are examined under this rule to see what legitimate purposes they serve and how they affect competition in the market involved. See National Society of Professional Engineers v. United States, 435 U.S. 679 (1978); United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

Moreover, courts sometimes examine a transaction alleged to involve a per se violation under an analysis similar to that used in rule of reason cases before deciding whether a per se rule should be applied. Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 12 (1984), 104 S. Ct. 1551 (1984). There is, in effect, a middle ground of actions that may be given per se treatment.

authority, acting in accordance with its own perception of its economic interest and the public and governmental interest.[4]

There are also a number of so-called "vertical" agreements -- that is, involving persons at different levels of business (e.g., manufacturing, wholesaling, retailing) in which a person at one level of the market seeks to restrict the ability of the other at a different level to do business -- that have aroused antitrust scrutiny. The typical situation is that of a manufacturer or wholesaler that seeks to restrict the price charged by a retailer or the manner in which the retailer does business. These include: vertical price-limitation agreements;[5] distributorship agreements that limit the kinds of products that the distributor may handle or the geographical area or customers to which it may sell;[6] "tying" arrangements whereby a party agrees to sell one (unique or very desirable) product on the condition that the buyer must also purchase a different product;[7] and a requirement that the buyer purchase products or services exclusively from the seller.[8] The setting of an "unreasonable" fee for use of facilities, such as is involved here, is clearly different from the foregoing types of arrangements.

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[4] It should be noted that the law generally assumes that a local governmental authority acts in the broad public interest. Town of Hallie v. City of Eau Claire, 471 U.S. 34, 47, (1985). Moreover, acts taken by members of the public to petition and lobby governmental authorities, are not generally considered "conspiratorial" actions that violate the antitrust laws. To the contrary, they are regarded as legitimate, indeed constitutionally protected, interactions between such persons and the government. This is recognized by the "Noerr-Pennington Doctrine" which declares that such actions are not subject to the antitrust laws. See Campbell v. City of Chicago, 823 F.2d 1182, 1186 (7th Cir. 1987).

[5] These are usually regarded as "per se" violations of the antitrust laws. See Monsanto Co. v. Spray Rite Co., 465 U.S. 752 (1984).

[6] See e.g., Ryko Mfg. Co. v. Eden Services, 823 F.2d 1215 (8th Cir. 1987), cert. denied, 484 U.S. 1026 (1988).

B. Section 2 of the Sherman Act

The other key provision of the antitrust laws, Section 2 of the Sherman Act, prohibits, inter alia, the monopolization of, or the conspiracy to monopolize, any part of interstate trade or commerce. A monopoly is generally defined as the power to control prices or to prevent access by others to the defined "market," which comprises the geographic area and product or service involved. U.S. V. Grinnell Corp., 384 U.S. 563 (1966); U.S. v. E.I. Du Pont De Nemours & Co., 351 U.S. 377 (1956).

It is equally hard to find under this section a traditional legal basis for action against the local government authority. Because the local airport authority usually houses several on-airport car rental companies, it can hardly be said to be involved in a "monopolization" of car rentals in the area

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7/ See e.g., Fortner Enterprises, Inc. v. United States Steel Corp., 394 U.S. 495 (1969).

8/ Section 3 of the Clayton Act, 15 U.S.C. § 14, prohibits, inter alia, the sale of commodities or the fixing of a price therefor on the understanding that the purchaser shall not deal in the commodities of a competitor of the seller, where the effect may be anticompetitive. Such conduct, including that affecting intangible articles of trade, is also actionable under Section 1 of the Sherman Act.

involved. See City Communications, Inc. v. City of Detroit, 888 F.2d 1081 (6th Cir. 1989). Moreover, the possession of "monopoly power" by a government over a governmentally-initiated project has traditionally not been viewed as objectionable. It is not ordinarily considered actionable under the antitrust laws when authorized by state law. Indeed, even before the Parker decision, the courts had expressed an unwillingness to apply antitrust law in a way that would interfere with local government functions,[9/] and recent case law is consistent with this view.[10/]

Even if we were to ignore these barriers[11/] to Section 2 liability, there are additional hurdles here that cannot be

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[9/] See, e.g., Olsen v. Smith, 195 U.S. 332 (1904) (Harbor pilot's monopoly, resulting from state's authority to regulate coastal traffic and to appoint certain pilots and exclude others, held immune from antitrust attack); Lowenstein v. Evans, 69 F. 908 (Cir. Ct., Dist. S.C. 1895) (state liquor monopoly immune from federal antitrust scrutiny).

[10/] See, e.g., City of North Olmsted v. Greater Cleveland Regional Transit Authority, 722 F.2d 1284 (6th Cir. 1983), cert. denied, 467 U.S. 1205 (1984); Gold Cross Ambulance v. City of Kansas City, 538 F. Supp. 956 (W.D. Mo. 1982), aff'd, 705 F.2d 1005 (8th Cir. 1983), cert. denied, 471 U.S. 1003 (1985); Shrader v. Horton, 471 F. Supp. 1236 (W.D. Va. 1979), aff'd, 626 F.2d 1163 (4th Cir. 1980).

[11/] There are other probable barriers as well. First, to mount a Section 2 monopolization claim, the "relevant market" would have to be defined as the "market for services to passengers and others utilizing the airport," a narrow definition drawn most unfavorably to the local authority. Further, it would also have to be proved that the local authority has the power to exclude competition in and about the airport because of its control of facilities and access, but some effective fringe competition may, in fact, be present in a particular situation. Further, it would have to be shown that the local authority had power to control prices within the market, even though this may not be true, and local authorities do not seem to have done so.

cleared. Ordinarily, the possession of monopoly power is not itself actionable.[12] Rather, the monopoly must have been acquired by conscious acts undertaken to exclude others,[13] or there must be a purpose or intent to exercise monopoly power unlawfully.[14] As to the former factor, the exercise by a state government of its police powers and of eminent domain; which underlie its control of airport operations, is not ordinarily actionable, and a similar exercise by local government, if it is adequately authorized by state law to own or operate an airport, is not likely to be actionable.[15]

As to the latter factor (unlawful exercise of power), none of the usual acts comprising an unlawful exercise of monopoly power is present. It is, at the outset, worth noting that the airport authority is not, in any accepted antitrust sense, a "competitor" of the off-airport car rental companies.[16] It

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12/ U.S. v. Grinnell Corp., 384 U.S. 563, 571 (1966).

13/ American Tobacco Co. v. United States, 328 U.S. 781, 813-14 (1946).

14/ See Cowley v. Braden Industries, Inc., 613 F.2d 751 (9th Cir.), cert. denied, 446 U.S. 965 (1980).

15/ See Pueblo Aircraft Service, Inc. v. City of Pueblo, 679 F.2d 805 (10th Cir. 1982), cert. denied, 103 S. Ct. 762 (1983).

16/ While the airport authority may be concerned with the economic welfare of on-airport car rental firms, it does not have economic interests identical with theirs, and therefore cannot be considered to be the equivalent of an actual competitor of the off-airport firms (even assuming, in the first instance, that an imputation of equivalency is itself a permissible notion). For example, the airport authority (continued...)

follows that certain recognized monopolistic practices cannot be shown to be present. That is, the authority is not engaged in "predatory pricing" (below-cost selling) against its competitors.[17] There is, moreover, no refusal on its part to deal with a competitor.

There is also no actionable denial of access under the "essential facility" doctrine. Merely because a facility may be deemed "essential" does not mean that there is a legal right of access to it. Rather, "essential facilities" cases have dealt with the situation in which a monopolist has refused to give its competitors access to the essential facility; has denied access to the facility in order to force others not to do business with its competitor; or, at least, is involved in a conspiracy among competitors of the denied party to deny access.[18] None of these circumstances is present here.

Moreover, there is no attempt here by the local governmental authority to use its "monopoly" in the airport service area as

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16/(...continued)
would generally desire to increase the fees paid by on-airport car rental firms, and reduce services to them, while the rental firms desire the opposite.

[17] See Southern Pacific Communications Co. v. American Tel. & Tel. Co., 740 F.2d 980 (D.C. Cir. 1984), cert. denied, 470 U.S. 1005 (1985).

[18] See Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 (1985); Otter Tail Power Co. v. U.S., 410 U.S. 366 (1973); Lorain Journal Co. v. U.S., 342 U.S. 143 (1951); Byars v. Bluff City News Co., 609 F.2d 843 (6th Cir. 1979); Hecht v. Pro Football, Inc., 570 F.2d 982, 992-93 (D.C. Cir. 1977), cert. denied 436 U.S. 956 (1978).

"leverage" so as to obtain for itself a monopoly or competitive advantage in yet some other market.[19]

In short, the traditional bases for antitrust liability under Section 2 of the Sherman Act are absent.

C. Newly Created Cause of Action

The proposed legislation thus would create an antitrust violation solely as the result of the independent establishment of a price by a non-competitor,[20] if competition in car renting is adversely affected. Such a violation would exist without further proof of those elements that would provide a traditional basis for a violation of the antitrust laws. The proposed legislation thus involves not an application of existing antitrust principles to the practices involving airport privilege fees; but rather, the creation of a new substantive offense that protects the special interests of off-airport car rental companies.

IV. EROSION OF "STATE ACTION" DOCTRINE WOULD ESTABLISH PRECEDENT FOR OTHER INDUSTRIES

As indicated above, the proposed legislation is designed to create an "antitrust" cause of action for off-airport car rental firms that both overrides the "state action" doctrine and avoids the need for traditional proof of violation. However, there are other special interests that have faced difficulties in attempting to mount antitrust challenges to local government actions. If such legislation is adopted to assist certain car rental companies, then those other special interests also will have claim to similar legislation. Ambulance services, taxi franchises, waste disposal operations, health care providers, electric power distributors, to name a few, have encountered the state action doctrine and other barriers in attempting to maintain an antitrust action. Moreover, businesses of this nature would seem to present far stronger "public interest" claims for special legislation than car rental companies possibly can. Examples of businesses in this category are as follows:

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[19] See United States v. Griffith, 334 U.S. 100 (1948).

[20] Application of the antitrust laws generally requires some kind of "competitive nexus" between the plaintiff and the defendant. See, e.g., White v. Rockingham Radiologists, Ltd., 820 F.2d 98, 104-05 (4th Cir. 1987); General Industries Corp. v. Hartz Mountain Corp., 810 F.2d 795, 809 (8th Cir. 1987); Bhan v. NME Hospitals, Inc., 772 F.2d 1467, 1470 (9th Cir. 1985).

- Waste Management: Independent waste haulers' business curtailed by county's decision to give an exclusive contract for waste disposal to a single entity. Antitrust claim frustrated by state action and Noerr-Pennington doctrines. Savage v. Waste Management, Inc., 623 F. Supp. 1505 (D.S.C. 1985).

- Medical Peer Review: Excluded woman physician summarily dismissed from hospital staff without opportunity for hearing. Antitrust relief denied because of state action doctrine. Doe v. St. Joseph's

Hospital of Fort Wayne, 788 F.2d 411, 416-17 (7th Cir. 1986).

- Taxicabs: City restrained competition in taxi service to a major airport by granting an exclusive concession for taxicab service to a single company. All cabs had to subcontract with Yellow Cab and agree to its operating terms. The excluded drivers' antitrust claim was barred by the state action doctrine. Independent Taxicab Drivers' Employees v. Greater Houston Transportation Co., 760 F.2d 607, 610-11 (5th Cir.), cert. denied, 474 U.S. 903 (1985).

- Water Service: Developers frustrated by local governments' agreement to limit sewer and water services, but antitrust claims were defeated by the state action doctrine. LaSalle National Bank v. County of Du Page, 777 F.2d 377, 350-384 (7th Cir.) cert. denied, 106 S. Ct. 2892 (1985).

- Ambulance Service: Ambulance operators could pick up no patients in Kansas City because of award to single ambulance operator. Ambulance operators' claims defeated by the state action doctrine. Gold Cross Ambulance of Trenton v. City of Kansas City, 705 F.2d 1005 (8th Cir. 1983).

- Construction of Electrical Power Distribution: A municipal electrical utility district allegedly used its lawful monopoly in electric power distribution to monopolize competition for construction of electric distribution systems on private property, but its actions were held to be immune from antitrust relief by reason of the state action doctrine. Grason Electric Co. v. Sacramento Municipal Utility District, 770 F.2d 833 (9th Cir. 1985).

- Exclusive Contracts to Provide For-Hire Transportation: The local authority precluded all competition for per-capita, for-hire transportation from the airport to San Francisco, but an antitrust attack was held precluded by the state action doctrine. Lorrie's Travel & Tours, Inc. v. SFO Airporter, Inc., CCH 1985-1 Trade Cas. ¶66,415 (9th Cir. 1985).[21]

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[21] There are others as well, e.g., Midwifery: Sweeney v. Athens Regional Medical Center, 1989-1 Trade Cases (CCH) ¶ 68,479 (M.D. Ga. 1989); Private Telephone Services: Coin Call, Inc. V. Southern Bell Telephone & Telegraph Co., 1987-2 Trade Cases (CCH) ¶ 67,838 (N.D. Ga. 1986); Cable Television: Best View Cablevision, Inc. v. City of Abbeville, 1986-2 Trade Cases (CCH) ¶ 67,241 (4th Cir. 1986); Real Estate Development: Unity Ventures v. County of Lake, 841 F.2d 770 (7th Cir. 1988), cert. denied, 109 S. Ct. 226 (1988); Gas Service: Sterling Beef Co. v. City of Fort Morgan, 810 F.2d 961 (10th Cir. 1987).

Giving each of these, as well as others, a special cause of action as well as an exemption from the "state action doctrine" would erode that doctrine substantially and would shift the responsibility for resolution of local problems away from local governments and into the federal courts.

V. THERE IS NO BASIS FOR SPECIAL TREATMENT OF CAR RENTAL COMPANIES

Because the proposed legislation would create a new cause of action for one class of businesses -- off-airport car rental companies -- when other businesses face similar problems and apparently could muster greater public interest claims, it might be expected that there would be clear economic or other empirical justification for special treatment. However, as shown below, no specific justification appears to exist.

There is nothing in the remarks of the sponsor of S. 1822 that supports a special cause of action for off-airport car rental companies. In fact, there appears to be continuing, substantial competition both among the on-airport firms (principally Hertz, Avis, Budget, and National) and from and among off-airport firms.

In introducing S. 1822, Senator Breaux relied upon a study conducted by the Department of Transportation ("DOT") in conjunction with the Federal Trade Commission ("FTC"). Entitled, "A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies," (April 1989) (the "DOT-FTC Report"), the Report concludes that it has "not been able to determine whether such fees are anticompetitive." Id. at 4. It points out, among other things, that concession fees and other income derived from car rental firms are an important source of airport revenues; that airports fear not only the erosion of on-airport firms' revenues (which provide a primary source of an airport authority's receipts) but also that such firms will move to off-airport locations; that the revenues of off-airport car rental companies are very substantial; and that the market share of off-airport firms virtually doubled during the period 1982-1987. It also notes that off-airport firms have been charged only "relatively modest" access fees by airports. Id. at 4-5.

It is a basic tenet of antitrust that the law is meant to protect competition not competitors. Brown Shoe Co. v. U.S., 370 U.S. 294, 320 (1962); Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477 (1977); Military Services Realty, Inc. v. Realty Consultants of Virginia, Ltd., 823 F.2d 829, 832 (4th Cir. 1987). That is, there are numerous situations in which a particular action or agreement may be adverse to one or more businesses -- by, e.g., reducing their revenues or profits -- but not have a substantial adverse effect on competition, because the market remains competitive and the public continues to receive price and service benefits that result from healthy competition.[22] The

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[22] As the Seventh Circuit stated in Roland Machinery Co. v. Dresser Industries, Inc., 749 F.2d 380, 394 (7th Cir. 1984): "The exclusion of competitors is cause for antitrust concern (continued...)

DOT-FTC Report notes that while some car leasing firms may arguably not do as well if asked to pay airport fees[23/], it cannot, nevertheless, determine that the fees are "anticompetitive." DOT-FTC Report at 4.

This is exactly the conclusion drawn by the FTC's Bureau of Economics:

> "Although our analysis implies that the imposition of off-airport access fees would affect the profitability, and ultimately the supply, of off-airport and on-airport car rental service, we expect that in many markets the number of companies would be sufficient to maintain price competition in the car rental industry. That result would be more likely in markets where entry is relatively easy."

Report, Appendix A at 68 (footnote omitted).

22/(...continued)
only if it impairs the health of the competitive process itself."

23/ Even the effect on specific off-airport car rental firms is problematical. An interview-based survey of 12 airports that imposed off-airport fees ranging from 5% to 10% concluded:

> In summary, of the 12 markets examined, seven showed no discernible change in their level of business since the fee went into effect, although one or two respondents mentioned that customers occasionally ask why they are being charged the airport fee. Five respondents indicated that they had lost some business, notably repeat customers, who now rent from on-airport companies because of the loss of price advantage due to the airport fee . . . .

DOT-FTC Report at 34.

And at a later point, the FTC concludes:

> "In most major markets, we would not expect that any potential fall in the number of off-airport companies would significantly increase the risk of anticompetitive behavior because entry into the off-airport car rental market, at many locations, appears relatively easy."[24]

Id. at 75 (footnote omitted).

Thus, there would appear to be no rationale or empirical data to support creation of a special cause of action for car rental companies that would both overturn the state action doctrine and eliminate the need for traditional proof of an antitrust violation.

VI. THE PROPOSED LEGISLATION CONFLICTS WITH ANTITRUST ECONOMIC PRINCIPLES AND WOULD PROMOTE COMPLEX LITIGATION ON ISSUES THAT HAVE NO ANTITRUST PRECEDENT

Both H.R. 3325 and S. 1822 would create antitrust liability for the imposition of "an unreasonable and unjustly discriminatory" fee that has the statutorily required marketplace effects. In addition, H.R. 3325 (but not S. 1822) apparently would require that the fee be cost-based and narrowly restricted -- i.e., "related to the use of the roadways and facilities built primarily to meet such operator's special needs" so as to compensate "for costs allocated to providing such special needs as roadways and pick-up and drop-off areas to defray any other costs related to usage." The remarks of the sponsor of S. 1822, on the other hand, seem to contemplate that the off-airport companies may be charged also for the "benefits received," but mention as benefits only "sales booths, direct access to air travelers, parking and advertising privileges which are not typically provided to off-airport companies." Cong. Rec., Oct. 31, 1989, at S. 14443. Both statutes would appear to place artificial limits on the basis for determining a reasonable fee.

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[24] The absence of significant barriers to the entry of competition in a given market strongly suggests that the market is competitive. See, e.g., Allen-Myland, Inc. v. International Business Machines Corp., 693 F. Supp. 262, 278-79 (E.D. Pa. 1988); L. Sullivan, Handbook of the Law of Antitrust 77 (1977).

The antitrust laws, in contrast, would call for an analysis of the economics underlying a market situation or transaction without artificial restriction or prejudgment. See e.g., Morton Buildings of Nebraska, Inc. v. Morton Buildings, Inc., 531 F.2d 910 (8th Cir. 1976); Borden, Inc. v. FTC, 674 F.2d 498, 511-512 (6th Cir. 1981), vacated and remanded for entry of judgment by consent, 103 S. Ct. 2115 (1983); In Re IBM Peripheral EDP Devices, 481 F. Supp. 965 (N.D. Cal. 1979).

One of the clearest economic "benefits" provided by an airport authority to both on and off airport business is the concentrated flow of passengers requiring services, particularly follow-on ground transportation. That is, the airport authority makes available to commercial enterprises not simply a road or pick-up/drop-off area, but a continual, concentrated flow of customers with special needs. The DOT-FTC Report recognizes this benefit in several places, e.g., referring to a "fee structure" in which "one would need first to consider all of the benefits

provided by the airport (such as . . . improved profitability of the businesses that depend on the airport) as well as the costs imposed by the airport (such as noise . . . and the congestion) . . . . The efficient fee schedule may require payments from all that benefit from the airport." Report at 66.

H.R. 3325 would apparently distort, from the outset, any legitimate antitrust or competitive analysis by limiting "reasonable" fees for off-airport firms to those that reflect costs, but not benefits. S. 1822 would apparently recognize benefits, but in an artificially narrow range. In fact, the principal benefits it notes (counter-space, advertising and so forth) are separately paid for by car rental companies and are not included in the revenue fee structure. Conversely, if access fees for off-airport firms are to be limited to those reflecting the specific costs of facilities used, such as roads, then the fees imposed on on-airport firms should be limited as well.

In requiring that off-airport firms be assessed fees based on limited costs while on-airport firms' fees are based on benefits, the proposed legislation would require that *on*-airport users artificially *subsidize* the *off*-airport car rental firms, and would give rise to a violation of law if they do not do so. The airport's costs (however composed and measured) must be paid from its sources of revenue -- *i.e.*, (1) state, local and federal subsidies and grants and (2) earned income from air carriers, other air-related operators, and other persons providing goods and services at the airport or to airport passengers. All sources of earned income depend ultimately on the revenues recovered from passenger traffic. If those receiving the benefits of the traffic do not pay for this benefit, airport costs will be transferred to other airport users. Thus, users of _on_-airport car rental firms subsidize the owners and users of _off_-airport car rental operations that do not pay a privilege fee that appropriately recognizes the airport-related benefits received.

The development of a "fair" or reasonable fee is not a typical function of a court or an antitrust proceeding. It would be new ground and promote complex, expensive litigation, comparable to ratemaking before public utility regulatory agencies. Moreover, the threat of such litigation, specially assisted by new legislation, would be likely to dissuade airports from imposing even fair fees on off-airport firms and would perpetuate a subsidy.[25]

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[25] While the Robinson-Patman Act, 15 U.S.C. § 13-13b, 21a, is not applicable here because an airport fee does not involve the sale of commodities (and for other reasons), that law provides one benchmark that illustrates how far the proposed legislation strays from current antitrust and related price-discrimination laws. The Robinson-Patman Act does assist businesses, particularly smaller businesses, in the area of discriminatory pricing. In relevant part, that Act makes it unlawful for a seller to discriminate in price between two competing customers of commodities of like grade and quality where the effect may be substantially to lessen competition or tend toward the creation of a monopoly. However, the Act is not triggered until there is a _difference_ in the prices charged to two competing customers, and the _disfavored_ purchaser is required to pay a _higher_ price. Equal prices create no liability. _See_ _FTC v. Anheuser-Busch, Inc._, 363 U.S. 536, 549 (1968). The Act does not require a court (continued...)

VII. CONCLUSION

The proposed legislation creates a new cause of action that would probably prevent local airport authorities from imposing gross receipts fees on off-airport car rental firms. It would substantially erode the "state action doctrine" and thus authorize federal intrusion into state and local governmental matters. It would establish restrictions on airport access fees not related to economic costs and benefits nor consistent with the premises underlying the antitrust laws. The legislation is aimed at the protection of a special interest rather than the implementation of antitrust law or theory.

25/(...continued) to establish independently a fair, non-discriminatory price for each customer.

ATTACHMENT C

Competition and Airport Privilege Fees:
A Review of Developments During 1989

Prepared for
The Hertz Corporation
by
Paul A. London, Ph.D.

April 24, 1990

I. Introduction and Executive Summary.

Legislation has been introduced in both houses of the Congress to amend the Clayton Act (H.R. 3325 and S. 1822). The legislation is aimed specifically at the imposition by local airport authorities of fees on "non-tenant" users of the airports, principally off-airport car rental companies.[1/] The bills provide that such firms may challenge these fees if they would "substantially lessen competition or tend to create a monopoly." The proposed amendments appear to encourage such challenges.

This study reviews empirical evidence to see if there is anything to suggest that privilege fees levied on off-airport car rental firms (on-airport car rental companies already pay privilege fees) are lessening competition. It concludes emphatically ... and based on a substantial amount of data ... that there is not the slightest indication that competition is being reduced by off-airport firms paying privilege fees. Indeed, data covering both large and small airports show unambiguously that airports which levy privilege fees are adding

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[1/] This paper refers repeatedly to on-airport and off-airport car rental companies. On-airport companies are firms which generally have counters in airport terminals and facilities on airport grounds. Off-airport rental car companies do not have counters in terminals and generally have their facilities off airport property.

Both types of firms referred to in this study . . . on-airport and off-airport companies . . . cater specifically to passengers arriving at airports. In-town locations of rental car firms and locations which, for example, provide "replacement" cars in case of auto accidents, are not covered in this report.

car rental firms at a rate at least as fast as airports which do not (see Table 4). Competition, measured by the number of competing car rental companies, is continuing to increase as much or more at airports levying privilege fees on off-airport car rental companies, as at airports which still do not levy them. Moreover, both new off-airport as well as new on-airport competitors continue to come into the business (see Table 5).

The conclusions outlined above are based on comparisons of data, which overlap and reenforce one another. Data comparing numbers of car rental companies on and off-airport were available from the Sabre Computer Reservation System for November, 1988 and then for January, 1990. These data covered twenty-seven larger airports.

Another comparison of on vs. off-airport firms is made for a list of smaller airports canvassed by the Department of Transportation (DOT). This comparison matches data on rental firms reported by a DOT telephone canvas in November, 1988, with data from the Sabre system for January, 1990 for the same list of smaller airports. Comparisons of data covering both larger and smaller airports show that numbers of competing car rental companies increased at a clear majority of airports where privilege fees are levied.

The empirical data presented in this report confirm anecdotal evidence in a DOT report released in April, 1989, and opinions expressed in the trade press.[2] Both DOT and the trade press emphasize that competition among car rental companies at airports is vigorous. Clearly, Federal legislation is not warranted in an area where competition is by all accounts healthy and expanding.

Relatedly, the recent Statement of National Transportation Policy from the U.S. Department of Transportation calls for local efforts to raise revenues by charging users of local facilities. It states that "State and local governments and the private sector need greater flexibility to employ innovative financing techniques, such as benefits assessments, joint development rights, and other means of capturing the value of transportation investments in fees assessed on the private firms that benefit from transportation services or facilities".[3] Efforts by local airports to raise revenues through privilege fees are exactly the kind of effort DOT is recommending. Therefore, it would be a

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2/ U.S. Department of Transportation Report to the Senate Committee on Appropriations; the Senate Committee on Commerce, Science and Transportation; the House Committee on Appropriations; and the House committee on Public Works and Transportation, "A Review of the imposition of Gross Receipts Fees on Off-Airport Car Rental Companies" (April 1989), DOT-P-37-89-1.

3/ Department of Transportation, Moving America - New Directions, New Opportunities, A Statement of National Transportation Policy, February, 1990, p. 5.

serious mistake . . . in the absence of any evidence that such fees limit competition . . . for Congress to block these efforts.

II. Overview

This paper addresses the competitive nature of the car rental industry and its relation to airport privilege fees. This section includes an important discussion of the background of the issue, and a summary (running to page 12) of the basic conclusions of the paper. A longer discussion, starting at page 12, describes in detail the data used, presents the numerical evidence for the conclusions reached, and describes the competitive situation in the car rental industry that is the context for the privilege fee issue.

A. Background

To understand the issue raised by the proposed bills to limit the ability of local airport authorities to levy privilege fees, it is important to understand (1) who pays privilege fees, (2) on what basis they are paid, and (3) how they have evolved in recent years.

Airports for many years have levied privilege fees (usually about 10 percent of gross receipts) on so-called "on-airport" car rental firms, companies with counters in terminals and other facilities on airport property. These privilege fees are levied because airport rental firms derive substantial benefits from access to airport users and have not been -- as some suppose -- a substitute for rent and/or lease payments for counters and parking facilities on-airport property. To the contrary, almost all on-airport rental companies pay rents and leasing fees to airport authorities in addition to the gross receipts privilege fees.[4]

In recent years, local airport authorities have begun collecting privilege fees from car rental firms whose counters and facilities are not immediately on airport property ("off-airport" companies). The airport authorities are levying these privilege fees on off-airport companies (often at levels somewhat lower than those on-airport rental concerns) because these car rental companies, like their on airport competitors, use the airports as the source of their customers and derive substantially the same economic benefits from their access to airport passengers that on-airport operators derive.

The expansion of fee programs to include off-airport firms has led to litigation by some off-airport car rental companies, but the courts have generally upheld the right of local airports to levy such fees.[5] After losing in the courts, some off-

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4/ U.S. Dept. of Transportation, A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies, April, 1989, p. 3.

5/ Id, p. 3, para 4.

airport firms have sought Federal legislation to limit sharply the ability of local airport authorities to levy privilege fees.

B. Conclusions Reached

This study examines whether airport authorities have lessened competition in the car rental business, or are likely to lessen it in the future, by imposing privilege fees on off-airport car rental companies. The investigation assumes that if there is evidence that local airport authorities are significantly reducing competition by imposing the privilege fees, Federal legislation might be justified to protect against this danger. If, however, evidence shows that competition has been unaffected by privilege fees on off-airport companies, clearly legislation is not warranted.

The best available empirical measure of competition is the number of competitors on and off airports over a period of time. If the number of competitors were declining, that would suggest that competition is being abridged. Evidence of reluctance of new firms to enter the car rental business at airports might also suggest that competition is endangered.

Research shows categorically, however, that competition has expanded, not contracted, at airports where privilege fees are beginning to be levied on off-airport operators, and that there are a healthy number of new entrants. Between November, 1988 and January, 1990, competition in the car rental industry, measured in terms of numbers of competitors, increased at airports levying privilege fees as well as at those that did not impose such fees; while some firms closed, more opened, as one would expect in a competitive market. There is no evidence that privilege fees abridged competition.

At the end of the period examined, there were 174 companies competing at 12 large airports levying fees, compared with 167 at the beginning of the period.[6/]

Moreover, at 21 smaller airports canvassed by DOT researchers in 1988 and 1989 and at airports where fees are levied on both on and off-airport car rental companies, somewhat less perfect data also were available to permit a comparison of the number of companies operating in 1988 and the number competing in January/February, 1990. The data for 21 smaller airports show that the number of competitors apparently increased at 11 locations and remained the same at 4, while declining at only six.

[6/] Indeed, the increase in competition, measured in terms of numbers of competitors, is slightly greater in percentage terms at airports that levy privilege fees.

Data also show an average of 7.9 car rental companies at these smaller airports in February, 1990. (On average there are over 13 competitors at larger airports.) These numbers by themselves are prima facie evidence that competition is not threatened at smaller airports any more than it is at larger ones due to privilege fees, and strengthens the case against intrusive Federal efforts that encourage antitrust actions against local airport authorities.

C. Relationship of this Report to an Earlier Study

The continuation and expansion of vigorous competition at airports at which privilege fees are levied is not surprising given the nature of competition in the car rental business, which is described in another study prepared by the author in December, 1988. That study showed that large differences in privilege fees were not economically justified given the very similar methods of operation between on and off-airport firms. Most firms in both categories now (1) bus customers to parking facilities and (2) depend on computer or centralized telephone reservations, which make counters in the airport less important. Moreover, most airports "rebid" contracts for on-airport counter space every three years, and many airports have space to increase the number of counters at the end of a contract period if there is demand.[7] This suggests that current off-airport firms that want counter space in a terminal can get it within a few years if they make the decision to do so.[8] The data presented in this second study, therefore, support the conclusions of the earlier study.

D. Other Factors Affecting Competition.

The legislative proposals to amend the Clayton Act are based on the claim by off-airport car rental companies that they as a group are threatened by privilege fees. A danger of such legislation, however, is that it could lead to law suits almost every time a rental car firm closes at an airport location, or arguably even if its profitability diminished in any given year. In each instance, the closing firm could argue that its economic problems resulted from the imposition of privilege fees. This would be a serious problem because car rental companies open and close frequently at airports all over the country for reasons

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7/ Bidding usually is focused on "minimum revenue guarantees" to airports. This is important to understand because the claim has been made that these minimum guarantee requirements are too high to allow small, off-airport rental firms to bid. However, because most off-airport firms do not operate in all 50 states, but rather only in selected markets, their fleets and revenues are, in key locations, often equal to or larger than on-airport firms. (See Automotive Fleet, 1989, p. 42) Thus, if these firms wanted to be on airport, most would be in a position to offer revenue guarantees as large or larger than many of the on-airport operators. Of course, to do so would trade in the cost advantage they enjoy at those airports where they now get free or almost free access to deplaning passengers.

8/ London, Dr. Paul A., Competition in the Car Rental Industry - The Issue of Airport Privilege Fees, December 22, 1988.

that have nothing to do with privilege fees and much to do with the competitive nature of this business.

The Department of Transportation made this point in a study of privilege fees conducted early in 1989 for the Congress. That study called the car rental business "a highly competitive business," and noted correctly that "there will always be companies entering or leaving" the market at individual airports. The DOT study concluded that "drawing a causal link between airport access fees and such actions is problematic."[9/] The danger of the amendments to the Clayton Act is that they would encourage law suits against local airports, although the cause of most changes in competition among rental companies at airports is not likely to be privilege fees.

A number of articles will be cited in this study by experts on the industry discussing the competitive character of this business. Without exception, they echo DOT's statements about the fiercely competitive nature of the car rental sector of the travel industry.

To illustrate the point above, this report discusses additional factors that are likely to affect competition in the car rental industry as much or more than privilege fees. These

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9/ Op cit, DOT, p. 3.

factors are principally (1) the rate of growth of airport traffic, and (2) shifts in the balance between leisure and business travel at individual airports that could affect individual rental firms differently.[10]

III. Data on Competition in the Car Rental Business at Airports

A. Number of Competitors

The best measure of competition in the car rental business is the number of firms competing at airport locations, and any changes in these numbers over time. Fortunately there are data on the numbers of competitors, which can be collected and analyzed.

A related indication of competition or the lack of it, which can be used to support data on numbers of competing car rental firms, is evidence of ease of entry for new firms. Although no attempt is made here to measure ease of entry, there are many indications that entry is not difficult.

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[10] At this time, there is no evidence of any change in the competitive balance between on and off-airport operators relating to privilege fees or any other issue. The point is that future entry or exit of firms at airports may result from factors other than action by local airport authorities to levy fees, and that the proposed changes in the Clayton Act would invite totally unwarranted litigation under these circumstances.

Market share data theoretically would be useful as a measure of competition in this industry on an overall and airport-by-airport basis. But market share estimates in the car rental industry have been questioned in the past [11/] and so are avoided. All indications are, however, that the car rental industry is becoming less, not more, concentrated.

Information on numbers of rental car competitors at individual airports over a reasonable time period is needed to assess the impact of privilege fees on competition among rental car companies. At the same time, some effort has to be made to separate the effects of changes other than privilege fees on the number of competitors at individual airports. DOT took this approach; it is also the approach taken in this report.

B. Data on Airports Levying Privilege Fees

A significant number of additional airports have begun collecting privilege fees from off-airport car firms since DOT conducted its research at the end of 1988. More up-to-date data now show that as of mid-January, 1990, 79 localities were collecting or about to collect from off-airport firms privilege fees based on a percentage of gross revenue. Another five (5)

11/ Business Travel News (Business Travel Survey), "Car Rental Firms Wage War with Numbers, Too," May 15, 1989, p. 5. This article which begins with the statement that "It's no secret that the car rental industry is fiercely competitive," discusses data problems that make it difficult to gauge accurately market shares of various car rental companies.

localities were levying fees on a per transaction basis. (See Table 1) When DOT conducted its research in November, 1988, only 42 airports were levying such fees. (See Table 2) The change represents a substantial increase in the number of airports levying privilege fees over the past year.

Table 1

Airports with Privilege Fees Based on Percentage of Gross Receipts.

(Total 79 - January 1990)

Akron/Canton
Atlanta
Atlantic City
Bakersfield
Baton Rouge
Binghamton
Birmingham
Boise
Charleston, SC
Chattanooga
Columbia
DFW
Durango
Erie
Fayetteville
2/1 Ft. Myers
Ft. Wayne
Ft. Worth Meacham
Gainesville
Galveston
Grand Junction
Grand Rapids
Greensville
Gulfport/Biloxi
Harrisburg
Hartford
Hayden, CO
2/1 Huntsville
Indianapolis
Jackson
Jacksonville
JFK - NY
Kalispell
Kansas City
Knoxville
LaGuardia
Lake Charles
Lincoln
Little Rock
Long Beach
Los Angeles
Louisville
Lynchburg
Manchester
Melbourne
Memphis
Midland
Missoula
Modesto
Moline
Montgomery
Naples
New Orleans
Newark - NJ
Norfolk
Omaha
Ontario
Orange County
Palm Beach
Palm Springs
Peoria
2/1 Phoenix
Portland, OR
Rapid City
Reading
Reno
Richmond
San Antonio
3/1 San Francisco
Sarasota
Savannah
Seattle Boeing
Shreveport
Sioux Falls
South Lake Tahoe
Spokane
Tallahassee
Tampa
Tucson

Airports Levying Privilege Fees
Per Transaction
(Total 5 - January 1990)

Denver	$6 - $10
Ft. Lauderdale	$3.10
Las Vegas	$3
Minneapolis	$1.75
Orlando	$2.50

As of January, 1990
Source: The Hertz Corporation

Table 2

Airports Authorized to Impose Off Airport Privilege Fees
(November 23, 1988)

Atlanta/Hartsfield
Atlantic City
Bakersfield
Baton Rouge
Boise
Charleston
Chattanooga
Columbia
Durango
Fayetteville
Ft. Worth/Meacham
Gainesville
Grand Junction
Grand Rapids
Greenville
Gulfport-Biloxi
Hayden
Jackson
Jacksonville
Kansas City International
Kalispell
Knoxville
Lake Charles
Lincoln
Long Beach
Manchester
Memphis
Missoula International
Montgomery
Naples
Omaha
Palm Beach International
Palm Springs
Rapid City
Reading
Sarasota
Savannah International
Seattle Boeing
Shreveport
Sioux Falls
South Lake Tahoe
Tucson

Source: DOT-P-37-89-1, April 1989; Information on the airports assessing gross receipts fees was provided by Americans Against Unfair Airport Fees; U.S. Department of Transportation.

C. DOT Data

Ideally, to ascertain whether privilege fees on off-airport car rental firms are reducing competition, one would show the number of car rental companies operating at the 79 airports listed in Table 1 before privilege fees were levied, compared with the number after they were imposed. However, such a data set is not available.

DOT researchers recognized the need to compare the pre-fee to the post-fee situation, and tried to do so by conducting ("anecdotal") interviews at a limited sample of airports levying fees. DOT researchers conducted telephone interviews with 12 owners or managers of off-airport car rental agencies at airports actually collecting fees in January, 1989,[12] and in effect asked whether competition had been diminished by the advent of privilege fees.

The DOT interviews revealed no pattern of diminished competition and only a few specific complaints about effects of the fees, even though the interviews were exclusively with operators of off-airport car rental firms, who might have been expected to believe that privilege fees would limit competition. The empirical "bottom line" of the DOT interview effort was that six rental companies had opened and five had closed at the 12 airports where limited interview data were collected.[13]

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[12] Op cit, p. 22. The DOT study relied on interviews with representatives of off-airport rental companies at 12 airports. DOT researchers, therefore, noted that they had relied on incomplete and anecdotal data and that "actual experience" with fees was "quite limited." Op cit, pp. 3-4. As a result, they were unable to come to what they called "firm conclusions" about the impact of privilege fees on competition. Ibid. They could not say that competition was being abridged, but they could not say otherwise either based on the limited and anecdotal data.

D. Data from Computerized Reservation Systems.

There are non-anecdotal data available from sources not used by DOT to cover a larger "sample" of the 79 airports now levying or planning to levy privilege fees on off-airport car rental operators. The data are from computerized reservations systems (CRS's) available to travel agents, which book car rentals for airport users. These CRS listings provide comprehensive information about on and off-airport car rental companies serving each airport. This study uses as its source the Sabre System operated by American Airlines.

The CRS listings are very comprehensive because responsibility for the information displayed rests with car rental firms. The rental companies obviously want to be listed so that travel agencies will refer business to them.

13/ Op cit, p. 34-35.

Still, data that would allow comparison of pre versus post privilege fee competition are scarce and imperfect. It is not possible to go back into these CRS systems for lists of car rental firms at each of the 79 airports prior to the enactment of privilege fees and compare them to the current situation. The CRS systems have no reason to retain historical data, and do not do so.[14] The historical data available to make comparisons for this study, therefore, had to be taken from print-outs from the Sabre System made in connection with the earlier study by this author (cited above). These older print-outs list the car rental companies competing at 27 large airports as of November 30, 1988. Because the Sabre System data designate whether rental firms are on or off airports, the November, 1988 data can be compared with data for these 27 airports as of January, 1990.

E. Historical Data Covering Twenty-Seven Larger Airports

The historical print-out from the Sabre System that exists is very useful. It allows comparison at a significant cross-section of larger airports, and includes 12 fee-collecting airports and a "control" group of 15 non-fee airports.[15] This

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14/ Telephone conversation with Sabre System manager, February 1, 1990.

15/ Op cit, DOT, table 3.4, pp. 26 - 30. The data from the Sabre System have listings of rental firms at most of the smaller airports queried by DOT in January, 1989. The listings, however, are not comparable because DOT's data came from telephone calls to airport operators. In most cases, nevertheless, Sabre shows as many or more companies competing in January, 1990, as did DOT.

is a somewhat broader sample than DOT developed, although it is weighted toward larger airports.

In addition, however, a larger print-out from the Sabre System covers about 60 smaller airports at which fees are being levied and shows the number of rental firms on and off-airport at all of these facilities. There are no exact historical "match ups" for these data but they show that there are many competitors operating at each airport. The comparative data from the Sabre System, therefore, form the core of this report.

IV. The Impact of Privilege Fees on Competition

The central economic issue raised by the proposed legislation is whether actions by local airport operators of levying privilege fees on off-airport car rental companies tend to limit competition. The comparative data from the Sabre System indicate no such tendency. To the contrary, they show that competition, measured by the number of car rental firms competing at airports, increased between November, 1988 and January 1990, both at airports which impose privilege fees and at those that do not.

A. Increasing Competition Measured in Number of Firms Per Airport

Table 3 shows that the number of car rental competitors at 27 larger airports on January 18, 1990 was 374, an average of

13.85 per airport. Three hundred seventy-four represents an increase of 14 companies over the figure of 360 competitors in operation on November 30, 1988.

Table 3 also shows that the lowest number of competitors at any of the larger airports in January, 1990 was seven.[16] Only three of the 27 large airports on the list have fewer than 10 competitors.

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[16] Note that the lowest numbers of competitors among larger airports were at JFK, which levies a fee, and at Pittsburgh, which does not.

Table 3
Number of Car Rental Competitors at Individual Airports

	Nov. 30, 1988	Jan. 18, 1990
Atlanta*	15	14
Boston	12	13
Charlotte	12	12
Chicago-ORD	13	15
Dallas*	14	15
Denver*	19	21
Detroit	12	13
Honolulu	10	9
Houston-IAH	14	12
Kansas City*	9	10
Los Angeles*	19	20
Memphis*	10	10
Minneapolis*	13	13
New York-JFK*	10	7
New York-LGA*	10	10
Newark*	13	15
Orlando*	18	20
Philadelphia	11	13
Phoenix	20	20
Pittsburgh	8	7
San Diego	21	22
San Francisco	16	18
Seattle	12	14
St. Louis	10	11
Tampa*	17	19
Washington-DCA	12	13
Washington-IAD	10	8
	360	374
	Avg. 13.33	Avg. 13.85

SOURCE: The Sabre System
American Airlines, November 30, 1988
January 18, 1990

* Airports where off-airport firms pay privilege fees at some level. Note, however, that per transaction privilege fees on off-airport firms at Orlando and Minneapolis were far lower than gross receipts fees levied on on-airport competitors, and that in many cases on-airport companies still pay 20-50 percent more than off-airport firms.

B. More Competition and Airports Levying Privilege Fees

If privilege fees were discouraging competition, one would expect a greater number of competitors at airports which do not impose privilege fees. However, the opposite is the case. Table 4 divides airports imposing privilege fees from those which do not. It shows that from November, 1988 to January 18, 1990, the number of competitors increased slightly more on a proportionate basis at airports levying privilege fees than at airports that did not levy such fees. The number of competitors at 15 non-fee airports rose from 193 to 200 over the period, while the comparable figures at 12 fee-levying airports rose from 167 to 174.

The average number of competitors serving non-fee airports went from 12.9 to 13.3 per location, while the comparable figure for fee-levying airports thus went from 13.9 to 14.5 per location.

It is noteworthy that the DOT reported a similar small net gain in the number of competitors at its sample of smaller airports where privilege fees are levied on off-airport operators.[17/]

[17/] DOT, p. 35.

Table 4

A - Numbers of Competitors at Airports Not Levying Privilege Fees.

	November 30, 1988	January 18, 1990
Boston	12	13
Charlotte	12	12
Chicago	13	15
Detroit	12	13
DC Dulles	10	8
DC National	12	13
Houston	14	12
Honolulu	10	9
Pittsburgh	8	7
Philadelphia	11	13
Phoenix	20	20
San Diego	21	22
San Francisco	16	18
St. Louis	10	11
Seattle-Tacoma	12	14
	193	200

B - Numbers of Competitors at Airports Levying Privilege Fees.

	November 30, 1988	January 18, 1990
Atlanta	15	14
Denver	19	21
DFW	14	15
Kansas City	9	10
LaGuardia	10	10
Los Angeles	19	20
Memphis	10	10
Minneapolis	13	13
Newark	12	15
Orlando	18	20
JFK	11	7
Tampa	17	19
	167	174

Source: Sabre System

C. Increase in Numbers of Competitors at Smaller Airports

The steady increase in numbers of car rental competitors at larger airports outlined in Tables 3 and 4 is based on completely comparable data from the Sabre system. Such data are not available for many of the smaller airports among the 79 listed in Table 1. However, DOT researchers did assemble lists of on and off-airport competitors at 21 generally smaller airports in their April, 1989 study.[18/] These lists of rental companies paying privilege fees were based on airport contacts, that is telephone calls to individual airports where fees were being collected. Therefore, although the sources of data are different, they facilitate a useful comparison with more recent data from the Sabre system covering those 21 airports.

Compared to the DOT table, Sabre data for February 8, 1990 for the 21 airports show more car rental companies at 11 airports, fewer firms at 6, and the same number at 4. There are more competing companies than the earlier DOT survey showed in total, just as there are on the larger airports. Therefore, there is no evidence to suggest that the situation at smaller airports imposing privilege fees is any different from the situation at larger airports. At both, competition is expanding despite an increased incidence of privilege fees.

[18/] Op cit, table 3.4, pp.26-30.

D. Shift from Off to On Airport Locations.

One change which might be expected to result from levying privilege fees on off-airport as well as on-airport car rental companies is a shift of off-airport firms to on-airport locations. Presumably, as privilege fees increase from 0 to 7 or 10 percent and become comparable with the fees paid by on-airport firms, the economic advantage of an off-airport location diminishes; thus, more off-airport operators will choose to locate on the airport property.

Table 5 shows that in overall terms this shift from off to on-airport locations has occurred to a modest degree at the 27 airports covered by comparable data. Off-airport locations declined from 104 to 102 at the 12 airports which levied fees on off-airport firms during the covered period, while on-airport locations rose from 63 to 72.

Table 5

Changing Numbers of On and Off Airport Competitors

A - Airports Levying Privilege Fees

	On Airport		Off Airport	
	1988	1990	1988	1990
Atlanta	8	9	7	5
Dallas	4	4	10	11
Denver	5	14	14	7
Kansas City	3	4	6	6
Los Angeles	5	5	14	15
Memphis (see below)	7	5	3	5
Minneapolis	5	5	8	8
New York-JFK	5	5	5	2
New York-LGA	5	5	5	5
Newark	5	5	8	10
Orlando	6	6	12	14
Tampa	5	5	12	14
	63	72	104	102

SOURCE: The Sabre System
American Airlines, November 30, 1988
January 18, 1990

NOTE: The designation "on" vs. "off"-airport is essentially meaningless at Memphis. Since July, 1986, any company serving the terminal on a daily basis has had to sign a permit for in-terminal phones and pay 8 percent of gross receipts as a privilege fee. All customers are bused but some companies have service facilities on the airport and some are off.

B - Airports Not Levying Privilege Fees

	On Airport		Off Airport	
	1988	1990	1988	1990
Boston	8	8	4	5
Charlotte	6	6	6	6
Chicago-ORD	6	6	7	9
Detroit	5	5	7	8
Honolulu	5	5	5	4
Houston-IAH	5	6	9	6
Philadelphia	6	6	5	7
Phoenix	5	4	15	16
Pittsburgh	5	5	3	2
San Diego	5	5	16	17
San Francisco	5	5	11	13
Seattle	5	5	7	9
St. Louis	5	5	5	6
Washington-DCA	5	5	7	8
Washington-IAD	4	5	6	3
	80	81	113	119

SOURCE: The Sabre System
American Airlines, November 30, 1988
January 18, 1990

A close look at the numbers for individual airports listed in Table 5 is revealing. It shows that almost all of the shift from off to on-airport locations at airports levying fees is the result of major changes at Denver. There, seven car rental firms moved from off to on-airport locations. Many former off-airport operators now have counters in the Denver airport and all rental car customers continue to be bused, both to on or off-airport parking areas.

The shift at Denver is probably due to the specific nature of the fee structure there, which is based on the number of rental transactions rather than a percentage of gross receipts. However, it is noteworthy that if the situation at Denver had not changed, the overall number of on-airport competitors at the fee-levying airports listed in Table 5A would have increased by only 2, while the number of off-airport locations would have increased by 5. Table 5A then would look very much like Table 5B, which shows the situation at non-fee airports. Thus, without the large shift at Denver, the number of off-airport firms would be continuing to increase faster than the number of on-airport firms both at airports that levy privilege fees and at airports that do not. These data support the conclusion that privilege fees are not limiting competition between off and on-airport firms.

The possibility of shift from off to on-airport locations at one or a few airports should not be a cause for concern.

(Indeed, in the absence of a comparable fee structure for on and off-airport firms a shift to off-airport locations would put airport revenues at risk and pose a greater financial threat to the travelling public.) In fact, however, competition in the car rental business is not two-sided, i.e. between on vs. off-airport operators, as some seem to believe. Reality is that competition within segments of the industry is fierce as a recent article attests.[19/]

E. Local Issues Unrelated to Privilege Fees Affecting Competition

The changes at Denver point to a more general issue that is important. Situations at individual airports vary significantly and competitive changes are often the result of local factors. A review airport-by-airport of the data from the Sabre System confirms that privilege fees are only one of several factors affecting the number of car rental firms competing at individual local airports. For example:

- One new car rental firm began operating at both Los Angeles and San Francisco Airports between November, 1988 and January, 1990, although Los Angeles had a fee and San Francisco had none until March 1, 1990.

[19/] See *The Wall Street Journal*, January 19, 1990, p. B1, among other discussions of competition in the industry.

- **Tampa, Newark, and Dallas-Fort Worth have each added off-airport car rental companies despite the fact that each imposes privilege fees.**
- **Houston, Honolulu, Washington (Dulles) and Pittsburgh each lost off-airport car rental firms, although these airports do not impose fees on off-airport companies.**
- At the three airports in the New York metropolitan area, a privilege fee of 8.5 percent is levied on off-airport operators while a 12.5 percent fee is charged to on-airport companies. Despite identical conditions with respect to fees, Newark added 2 off-airport rental companies, Kennedy lost 3, and LaGuardia remained unchanged.

Variation at individual airports is an important point to bear in mind when considering Federal legislation. The DOT report points out that in the competitive car rental business, factors other than the presence or absence of a privilege fee cause companies to enter and to leave.[20]

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[20] Op cit, DOT, p. 3.

V. Other Factors Affecting Competition

A. Air Traffic Changes

The previous sections show that privilege fees have had no discernible impact on competition between car rental firms operating either on or off airports as measured by numbers of competitors at airports. Indeed, the number of competitors continues to increase. Several articles, which refer to this continuing and expanding competition also describe some of the factors other than privilege fees which lead car rental firms to enter or to leave the car rental business.

1. The Effect of Stagnating Air Traffic

A major determinant of the health of the car rental industry is the level of airport traffic. Two recent articles, one in The Wall Street Journal and another in Business Travel News, note that the performance of the airport-based car rental business, including both on and off-airport firms, reflects the level of air traffic. The articles state that air traffic growth slumped in 1989, making it hard for car rental companies to recover rising costs by charging higher prices.[21] Slower traffic growth has increased price competition between car rental companies, which had been fierce even during the earlier years of rapid traffic growth.[22]

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[21] Christopher Winans, The Wall Street Journal, "In a Jam, Rental Car Firms Back Off on Higher Prices," January 19, 1990, p. B 1, and Jody Oesterricher, Business Travel News, "Car Rental Turf Wars to Impede Rate Hikes," Jan. 15, 1990, pp.1-2.

Airport privilege fees actually may help to encourage airport traffic growth at the margin, because they help defray airport costs that might otherwise have to be imposed on airline passengers in the form of higher ticket prices.

Table 6 shows that traffic growth measured by emplanements at most major airports has been slowing in recent years. Enplanements at most large airports expanded sharply in 1987, but almost half of the airports for which data were available had traffic declines in 1988, and over half had declines during the first six months of 1989.

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[22] David McCann, Business Travel News, "Corporations Shift into Second Gear," August 28, 1989. The subhead of this articles says "after standing on the sidelines through a series of car rental price wars, U.S. companies (customers of rental car companies) gradually learned how to be more aggressive negotiators and take full advantage of the new supplier options and advancing technology."

Table 6
Passenger Traffic Changes at Airports
(% change from previous period)

	1987	1988	1st 6 mos. 1989
Atlanta	4.1	- 2.2	-14.4
Boston	6.3	- 0.5	- 7.1
Charlotte	8.0	13.3	--
Chicago-ORD	--	--	--
Dallas	--	--	--
Denver	--	--	--
Detroit	7.4	2.4	1.9
Honolulu	5.7	8.3	7.4
Houston-IAH	6.5	- 5.4	6.5
Kansas City	13.7	0.4	8.4
Los Angeles	--	--	-15.8
Memphis	24.0	-10.2	- 9.4
Minneapolis	--	39.7	97.9
New York-JFK	11.0	2.0	- 3.3
New York-LGA	9.7	- 2.2	- 6.2
Newark	-18.5	- 5.7	-11.0
Orlando	--	--	.0
Philadelphia	20.9	1.0	- 3.5
Phoenix	11.6	29.2	11.6
Pittsburgh	9.3	2.3	- 4.4
San Diego	9.8	5.6	103.2
San Francisco	6.6	- 0.3	- 0.9
Seattle	6.4	2.2	2.7
St. Louis	--	--	--
Tampa	3.6	- 2.2	--
Washington-DCA	--	9.3	-10.7
Washington-IAD	--	--	--

SOURCE: Airports, U.S. Airport Traffic, McGraw Hill, January 16, 1990, 2nd DOT/TSC Calendar '85 ACIS Data Base.

The growth of domestic passenger miles flown also slowed in 1988 and 1989. Mileage grew only 1.5 percent in 1988 and 1.1 percent through August, 1989 after having grown by 6.9 percent in 1987, 10.8 percent in 1986 and 1985, and about 8 percent in both 1984 and 1983.[23/] The obvious point here is that continued stagnation in traffic growth and sharp declines at specific airports could lead some car rental companies to close at some locations and open at others. These changes, which could occur as the result of normal economic factors, would have nothing to do with privilege fees, and certainly should not invite costly antitrust litigation.

B. Shifts in the Mix Between Leisure and Commercial Travel

Off-airport car rental firms usually are significantly more dependent on domestic leisure (vacation) travellers than are on-airport companies. Sixty or more percent of the largest on-airport rental companies' business comes from a commercial clientele, while 60-75 percent of most off-airport customers are leisure travellers. Indeed, the off-airport segment of the car rental industry grew rapidly in the post-deregulation period largely in response to the growth in leisure travel.

[23/] U.S. Department of Transportation, National Transportation Statistics, August, 1989, table 6, and Air Carrier Monthly Statistics, December 1989.

A shift in the mix of travellers between commercial and leisure flyers at individual airports or overall would affect some rental car companies more than others. Again, these changes in the rental industry would affect competition between on and off-airport operators, in a manner unrelated to the imposition of privilege fees.

In any case, competition is ample among rental companies for both kinds of travellers. Several of the traditional on-airport operators have increased their efforts recently to court leisure travellers, and traditionally off-airport firms have increased their efforts to balance their customer mix with commercial travellers. There is no danger of a lack of competition, but changes are occurring in this competitive industry that may affect firms differently and should not be imputed to privilege fees.

VI. Summary

This study shows that since a DOT study of the impact of airport privilege fees was completed in April, 1989, more airports have begun levying fees. Nevertheless, competition measured by the number of car rental companies operating, has increased in the past year at airports levying privilege fees. There are more car rental firms competing at these airports, large and small, than there were in November, 1988.

Data show that the number of competitors has grown at both larger airports, and at the smaller ones, which DOT examined most extensively. Moreover, the numbers of competitors in the rental business at every airport seems sufficient to demonstrate that competition is adequate to protect consumers.

This report shows that while competition increased in the car rental business at airports levying fees during 1989, a number of factors other than privilege fees cause on and off-airport firms to close and/or shift locations at airports.

The clear danger in the proposed amendment to the Clayton Act, is that it could be used by car rental firms adversely affected by perfectly normal economic developments to blame their problems on actions by local airport authorities, i.e. the imposition of privilege fees. Without exception, observers of the industry state that competition is vigorous in every area of the business. There is simply no reason under these circumstances to provide extraordinary legislative "relief" that would encourage antitrust litigation aimed at a non-existent problem in an industry where competition is increasing and where informed observers believe it will continue at a very high level.

The Hertz Corporation
225 Brae Boulevard, Park Ridge, NJ 07656-0713

May 4, 1990

The Honorable Howard M. Metzenbaum
Chairman
Subcommittee on Antitrust, Monopolies
  and Business Rights
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you know, The Hertz Corporation testified before the Subcommittee on Antitrust, Monopolies and Business Rights of the Senate Committee on the Judiciary on April 24 in opposition to S. 1822, the "Fair Airport Access Assurance Act." Hertz hereby submits this brief supplement to explain further that the proposed legislation is unnecessary and unwarranted.

I. "State Action" Doctrine

The bill would amend the Clayton Act (15 U.S.C. §§ 12 et seq.) by creating a new federal cause of action. As discussed in a legal memorandum prepared by our counsel,[1] the proposed new cause of action is not consistent with traditional antitrust causes of action. In addition, it would upset the delicate balance between the legitimate interests of state and local governments to govern their constituents and the federal policy to promote competition.

The proposed legislation would seriously erode the "state action" doctrine articulated in two well known cases, Parker v. Brown, 317 U.S. 342 (1943), and Town of Hallie v. City of Eau Claire, 471 U.S. 34 (1985). In those cases and others, the Supreme Court held that the antitrust laws do not apply to state actions or actions taken by a municipality pursuant to a state policy.

S. 1822 would create a special exemption for the off-airport car rental industry. Departure from the state action doctrine would be bad public policy in any circumstances. To depart from it here, where there is no demonstrated need, would be particularly unfortunate. The Department of Transportation ("DOT") study of April, 1989,[2] and the study on competitiveness in the car rental industry prepared for Hertz by Dr. Paul A. London,[3] both show that the car rental business is highly competitive and airport privilege fees have not led to a diminution of competition. Specifically,

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[1] "Analysis of the 'Antitrust' Provisions of S. 1822 and H.R. 3325," prepared for The Hertz Corporation by Verner, Liipfert, Bernhard, McPherson and Hand (April 24, 1990).

- The DOT study revealed no pattern of diminished competition and only a few specific complaints about effects of the fees, even though the interviews were exclusively with operators of off-airport car rental firms, who might have been expected to believe that privilege fees would limit competition. The empirical "bottom line" of the DOT interview effort was that six rental companies had opened and five had closed at the 12 airports where limited interview data were collected.[4]

- Data from the Sabre Computer Reservation System show that airports that levy fees on off-airport companies added proportionately more rental companies from November, 1988 to January, 1990 than did airports not levying fees.[5]

On this record, there is no justification for the creation of a new federal cause of action as set forth in S. 1822.

II. Local Decisions

The determinations by local authorities to impose airport privilege fees on off-airport car rental firms and the level at which those fees have been set have been determined after thorough review and opportunity for interested parties to participate in the proceedings.

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[2] "A Review of The Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies," Department of Transportation Report to the Senate Committee on Appropriations; the Senate Committee on Commerce, Science and Transportation; the House Committee on Appropriations; and the House Committee on Public Works and Transportation, DOT-P-37-89-1 (April, 1989).

[3] London, Paul A., "Competition and Airport Privilege Fees: A Review of Developments During 1989" (April 24, 1990).

[4] "A Review of The Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies," Report of the Department of Transportation, at 34-35.

[5] London, Paul A., "Competition and Airport Privilege Fees: A Review of Developments During 1989" at 24.

About 80 airports across the country have imposed airport privilege fees on off-airport car rental firms. These measures were considered and adopted by the local airport board or commission or the municipality's city council pursuant to either state or local statutory authority and established procedures.

Typically, the Director of Aviation will present a proposed fee program to the board or city council and will prepare a position paper in support of the plan. The plan will be put on the agenda of the decision-making body. Interested parties will then be provided the opportunity to express their views at a public hearing. Depending upon the jurisdiction, the measure is often subject to two or three "readings" -- giving decision-makers the opportunity to debate the issue at separate meetings. Eventually, members of the board, commission or council vote upon the proposal. While these procedures vary among jurisdictions, they generally represent the administrative or legislative process followed by the many local communities that enacted airport privilege fees.

Throughout the proceeding, consideration is given to the appropriate percentage of gross receipts that should be collected from the off-airport firms. Each decision-making body determines the level based upon the value it assigns to the economic benefits received by the off-airport firms.[6/]

A percentage of gross receipts is viewed as an appropriate measure because it specifically relates to the benefits received. Thus, the off-airport firm only pays the fee based on the actual business it derives from the airport; it does not pay a guaranteed minimum fee as on-airport firms do.

III. Judicial Review

At times, off-airport firms have challenged the fees in court, primarily on the Constitutional grounds of equal

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6/ At the April 24 hearing, Mr. Harold Dunlap, a Dollar Rent-A-Car licensee from Montrose, Colorado, testified about airport privilege fees imposed on his business. It is clear from other evidence presented at the hearing and Hertz' subsequent investigation that Mr. Dunlap's situation is unique. Apparently, he has not had adequate opportunity to present his position to the airport authority. This situation is unfortunate; however, it does demonstrate that the issue of airport privilege fees is a local matter. The remedy to Mr. Dunlap's problem should lie, not with the United States Congress, but with the local governmental authority or reviewing courts.

protection, and the commerce clause. The courts have upheld the airport authorities' right to impose the fees and have found the fees to be reasonable. Courts typically find economic regulations are reasonable if they bear a rational relationship to a legitimate legislative or administrative objective, promoting the general public interest, and are neither arbitrary nor discriminatory.[7]

In Airline Car Rental, Inc. v. Shreveport Airport Authority, 667 F.Supp. 303 (W.D. La. 1987) the Court specifically considered the reasonableness of a 7 percent gross receipts fee charged to off airport car rental companies. It concluded that the fee was "reasonable and fixed according to some fair uniform standard."[8]

In reaching that conclusion, the Court cited Toye Bros. Yellow Cab Company v. Irby, 437 F.2d 806 (5th Cir. 1971), which considered the reasonableness of a 10 percent gross receipts fee imposed on limousines that picked up and discharged passengers at the New Orleans Moisant International Airport. The court in Airline Car Rental summarized the Fifth Circuit review in Toye Bros. as follows:

> While the Fifth Circuit in Toye Bros. specifically held the ten percent gross receipts fee to be reasonable, the fee also was fixed according to a fair, uniform, and practical standard. The fee was fair both because it was reasonable, and because the actual amount paid was directly proportional to the number of customers involved. The fee was uniform both because it was proportional to volume of business, and because it was a commonly accepted charge throughout the nation. Finally, the fee was practical both because it was easy to calculate and administer, and because it was the result of the interaction of supply and demand operating in a free market over a period of years.[9]

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[7] Burlington Northern Railroad Company v. Department of Public Service Regulation, 763 F.2d 1106 (9th Cir. 1985); Nebbia v. New York, 291 U.S. 502 (1934); City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985); City of New Orleans v. Dukes, 427 U.S. 297 (1976); Alamo Rent-A-Car v. Sarasota-Manatee Airport Authority, 825 F.2d 367 (11th Cir. 1987), cert. denied, 108 S.Ct. 1022 (1988).

[8] 667 F.Supp. at 313.

[9] Id.

Thus, the courts in *Airline Car Rental* and in *Toye Bros*. held that gross receipts fees are reasonable and do not impermissibly burden interstate commerce.[10]

The "reasonableness" standard of a rational relationship to a legislative objective is the traditional and accepted standard of judicial review for administrative or legislative action, even for review of rate proceedings of regulated industries. That standard is already available to disgruntled off-airport car rental companies. Simply because those firms have lost court challenges under that standard does not support the need for a legislative change of the standard.

At the April 24 hearing, one witness suggested that Congress establish a special, more "protective" economic standard of federal judicial review solely for off-airport car rental companies. In other words, he proposed to let the courts function as rate-making agencies. This more stringent economic standard of judicial review for one industry would be truly an extraordinary measure -- one that cannot be justified. Courts should not be put in the position of substituting their judgment as "super legislatures" on the economic reasonableness of a given fee that the appropriate decision-making body, with far greater expertise, has already adequately determined.

IV. Conclusion

The April 24 hearing provided interested parties with the opportunity to demonstrate the need for Congressional intervention in the fee programs established by local airport authorities. There has been no showing of diminution in competition in the industry. Conversely, the record reflects a vigorously healthy and competitive industry, both at airports with and at those without airport privilege fees. Accordingly, The Hertz Corporation respectfully requests that the Subcommittee reject S. 1822.

Respectfully submitted,

Paul M Tschirhart

Paul M. Tschirhart,
Senior Vice President and
General Counsel

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[10] *Id*. at 313-14. *See also*, *Alamo Rent-A-Car v. Sarasota-Manatee Airport Authority*, 825 F.2d 367 (11th Cir. 1987), *cert*. *denied*, 108 S.Ct. 1022 (1988).

Senator **Metzenbaum**. Mr. Lobeck, I gather that you may not be in total agreement with Mr. Tschirhart.

STATEMENT OF WILLIAM E. LOBECK, JR., VICE CHAIRMAN, THRIFTY RENT-A-CAR SYSTEM, INC., TULSA, OK

Mr. **Lobeck**. No, sir, I am not in agreement with Mr. Tschirhart. First of all, I would like to note that I am not a lawyer and I am not here to argue the law. I think Mr. Tschirhart forgets that you guys are the ones that make it.

I will also submit that if this were 1975 or 1976, Mr. Tschirhart would probably be sitting here arguing that Federal intervention in this business is not necessary either, but that was before the Federal Trade Commission's consent decree under which they agreed not to attempt to further limit competition in this industry.

The 1976 consent decree, which kept many—as a result of the 1976 consent decree, Budget and Dollar ultimately got on the airports. It is one of the reasons we are here today. There is another thing coupled with that, and that is the 1978 deregulation of the airline industry.

Senator **Metzenbaum**. Who got on the airport?

Mr. **Lobeck**. Budget and Dollar. I mean, most airports have five operators today.

Senator **Metzenbaum**. And where was that case filed? Was it a case having to do with all airports or just one particular airport?

Mr. **Lobeck**. No, sir. It was the 1976 Federal Trade Commission consent decree which Hertz, Avis, and National entered, and said that they would no longer stop Budget and Dollar from attempting to bid these airports.

Senator **Specter**. What happened to Thrifty at that time?

Mr. **Lobeck**. We were an off-airport car rental company then; we have always been one. We were not a party to that action.

Senator **Specter**. Was the opportunity for other companies to come on airport provided at that time or just limited to those two firms?

Mr. **Lobeck**. It was limited, as it is today.

Senator **Specter**. Thank you.

Mr. **Lobeck**. In any event, that decree decreased Hertz' market share. They had two more competitors in terminal. In 1978, they deregulated the airline industry, and that further eroded their market share. In the past two decades, they have lost half of their market share. They blame the off-airport car rental companies. I submit that it is not the Thriftys of the world, but it is a changing industry.

Thrifty continues to support cost-based user fees at airports. We have always said that. We also say that gross receipt fees are grossly unfair because we do not have the advantages that the in-terminal people have.

I was in New Orleans last week arguing against a fee. We examined the rents that the New Orleans airport is charging Hertz, Avis, and National, the on-airport thing. They are paying rents for airport ground that is 40 percent below the market rate. They don't pay any property taxes on $500,000 facilities they build there; they are exempt from them. Their guarantees to the airport perpetuate an ability to do business for at least 5 years with little or no risk.

Senator METZENBAUM. Is it the case that in most instances an additional charge is made for the ground space where the cars are parked on the airport, or is it normally included as a part of the 10-percent fee?

Mr. LOBECK. Senator, in many areas it is included. In some areas an additional fee is charged. Most times when that additional fee is charged, it is a fee that the airport dreams up or comes up with, has little or no relationship to fair market value.

Senator METZENBAUM. And you say that you were arguing over the weekend, or something, or just recently that——

Mr. LOBECK. In New Orleans.

Senator METZENBAUM [continuing]. The rate is——

Mr. LOBECK. Well, I was arguing against a gross receipts fee imposition in New Orleans.

Senator METZENBAUM. Before whom?

Mr. LOBECK. The city council of New Orleans.

Senator METZENBAUM. I see. Please proceed.

Mr. LOBECK. They argue that these fees are necessary to produce revenues for the airports, and that is just not the case because every dollar in most major airports that they take in from the off-airport car rental operators goes to reduce landing fees that are being paid by the airlines today.

I told you I was in New Orleans. I would like to read for the record part of the preamble to the New Orleans resolution, which was not acted on last week. It has been deferred to May 3, but it will give you an idea of the insight that is given by the airports to these fees.

They propose two fees there, a permit fee and a gross receipt fee, and the preamble reads, "Whereas the board," the airport board, "found that numerous off-site rent-a-cars are small operators with low profit margins and a privilege fee, in addition to the permit fee now being charged, would have the effect of putting them out of business * * *" This is part of the preamble to the resolution. I will submit to this committee that something is wrong with the antitrust laws when airports, at the request of on-airport operators, destroy off-airport car rental companies, deny the consumer of freedom of choice, while hiding behind the State action immunity doctrine.

Thank you.

[The prepared statement of Mr. Lobeck and response to questions follow:]

STATEMENT

OF

WILLIAM E. LOBECK, JR.
VICE-CHAIRMAN
THRIFTY RENT-A-CAR SYSTEM, INC.

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS
UNITED STATES SENATE

ON

S. 1822
THE FAIR AIRPORT ACCESS
ASSURANCE ACT

April 24, 1990

Mr. Chairman and Members of the Subcommittee:

Let me begin by telling you something about the Thrifty Rent-A-Car System. Thrifty is the licensor of more than 100 independent small businesses that operate this country's oldest and largest off-airport car rental network. We have over 752 locations worldwide, and our more than 515 locations in the United States and Canada make us the fifth largest daily car rental company in North America in terms of rental locations.

Thrifty adopted the off-airport car rental concept in 1962, and we and our licensees have spent the last twenty-eight years and millions of dollars identifying, advertising to, cultivating, and servicing the value-minded customer -- the customer who will pass up the convenience of renting on-airport for the value and efficiencies of renting off-airport.

In 1975, when the Federal Trade Commission issued a complaint against the Big Three car rental firms for monopolizing the car rental industry, Hertz, Avis and National effectively constituted 96% of the entire car rental market. Since 1976, when the FTC complaint resulted in a consent order,[1] Thrifty's number of daily rental vehicles has more than tripled and the off-airport car rental market has grown to one-third the size of the on-airport market.

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[1] See 88 F.T.C. at 720.

One of the reasons for our success has been the FTC consent order. Another has been airline deregulation, which has created tens of thousands of new travelers who are attracted by reduced airfares. These travelers are more price sensitive than the traditional business traveler who is often unwilling to spend the time needed to travel off-airport. Thrifty's customers forego the convenience offered by the on-airport companies to seek the value offered by renting their cars off-airport.

As a user of airport roadways, Thrifty has long been concerned with airport financing, and we believe we should pay our fair share for the cost and maintenance of those roadways. We have and will continue to support cost-based airport user fees. However, Thrifty believes that the antitrust laws should be amended to prohibit governmental entities from imposing on off-airport businesses unreasonable and unjustly discriminatory fees or taxes. Accordingly, we support the enactment of S.1822.

Airport-imposed gross receipts access fees are inherently unfair and unjustly discriminate against the off-airport operation in a number ways. First, these fees are only assessed against the off-airport car rental operator, and not on his competitor the on-airport operator. Yet, the off-airport business must compete with the on-airport business. On-airport business receives the obvious advantages of the right to:

- solicit and advertise on airport property;
- install courtesy phones;
- open a prominently positioned sales counter, often at below market rates;
- receive and serve customers in an airport-provided, taxpayer subsidized building;
- access walk-up customers without reservations (the walk-up market constitutes up to 40% of the business of on-airport operations -- a market that is completely denied to off-airport operations);
- provide ready accessibility to its primary customer, the business traveler;
- arrange on-airport parking and storage of its principal commodity -- rental cars;
- designate prime pick-up and discharge areas that are more accessible and clearly marked; and
- negotiate long-term concession agreements that prevent the airport from admitting additional competitors.

Secondly, gross receipts fees are also unfair and discriminatory because, of all of the off-airport businesses, it is the car rental industry that is singled out to pay them. One has to wonder why, of all of the businesses that cluster around airports, it is the car rental company -- the only business that has substantial on-airport competition -- that is forced to pay a percentage of its gross receipts to the airports. Taxing only the off-airport car rental business results in economic distortions that are almost comical. For example, at least one of our licensees uses his courtesy vehicle to take airline passengers to his car rental operation as well as to the hotel where his business happens to be located. The car rental customer pays a tax to the airport, the hotel customer does not.

Gross receipts fees are also unfair and unjustly discriminatory because they bear no relationship to the car rental company's use of or cost to the airport. Compare the air traveler who rents a car for a week with the traveler who rents a car for a night. Each pays an 8% or 10% tax on his or her car rental bill, but the actual amount collected on the former will be seven times greater than the tax collected from the latter. Yet, each traveler has used the airport precisely the same number of times -- once to fly in and once to fly out.

Or, compare the traveler who reserves his car when he makes his flight arrangements with the traveler who decides to rent his car when he arrives at his hotel. The former pays the tax, while the latter does not. I think that you will agree that it doesn't take much to show that gross receipts taxes are unfair and unjustly discriminatory.

But, it is just not off-airport car rental companies that are hurt by these fees. Consumers are concerned about the increased costs that these fees represent. There is no question but that the growth of the off-airport market has created a downward pressure on car rental rates. A study conducted by the Department of Transportation noted that both the DOT and the FTC found that the imposition of gross receipts fees will result in increased car rental rates and a decrease in the supply of car rental services to the value-minded traveler.[2]

The Consumer Federation of America, a coalition of more than 200 consumer organizations that is the nation's largest consumer advocacy organization, has estimated that the imposition of these fees could increase direct costs to consumers by $125 million per year, and the indirect impact of a change in industry pricing structure has been estimated to be in the order of $500 million.[3]

Competition within the car rental industry will also be adversely affected. By raising the costs of off-airport operations and raising market entry thresholds, the imposition of gross receipts fees will diminish the very competition within the industry that has kept car rental prices down. Although gross receipts taxes have not been on the books for very long, we are starting to see individual off-airport car rental operations fail because of these fees.

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2. U.S. Department of Transportation, A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies, April 1989 (hereinafter "DOT Report") at p.4.

3. Consumer Federation of America, "Airport Fees for Auto Rental Companies: A Consumer Perspective," June 1988 (hereinafter "CFA Study") at p. 9.

As I have already pointed out, Thrifty and the off-airport industry have grown in recent years. However, the car rental market remains highly concentrated: the Big Three companies still control 75% of the on-airport market, and if Budget is included, the four-firm on-airport market concentration ratio is over 95%.[4/]

This concentration within the car rental market can only increase with the imposition of gross receipts fees. Indeed, many observers in the industry and in Washington note that, by imposing these fees, airports are helping the on-airport segment of the car rental industry raise the costs of its off-airport competition.

Dr. Mark Cooper, Director of Research for the Consumer Federation of America noted last summer that: "These fees are not only inequitable and inefficient, they are anti-competitive in an industry that has a very checkered past. The big three on-premise companies have found a perfect trigger man to kill their competition. They want the airports to put their off-premise competitors at a tremendous disadvantage, just the way they did themselves back in the 1970s before they signed the FTC's cease and desist order."[5/]

This campaign against competition in the car rental industry can best be illustrated by reviewing a

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[4] DOT Report at p. 11; CFA Study at 7.

[5] See press statement accompanying CFA Study.

speech given to the American Association of Airport Executives (AAAE) on May 23, 1988, by Mr. Frank A. Olson, President of Hertz Corporation. With the Chairman's permission, I would like to ask that a copy of this speech, which was published and distributed by the Hertz Corporation, be inserted in the Committee's record of these hearings. In that speech, Mr. Olson railed against the competition from off-airport operators, and recalled wistfully the early days when:

> Car rental companies on airport -- and there were only three of us then -- had exclusive access to the deplaning customer .... The public recognized the convenience as an acceptable offset to the marginally higher price. All was well.

He then described the current competitive situation, stating:

> We, the on-airport rental companies, don't operate in a vacuum. We can't afford to price as if our heads were in the sand. We can't simply increase our prices to account for concession fees when off-airport rental companies are just beyond the airport gates ... I'm more than a little upset when I see airports, whom we support financially, supporting and subsidizing our competitors.

In short, Mr. Olson warned the airport authorities that, "you're in danger of killing the goose that laid the golden egg. It's bad for us and it's bad for you." Finally, Mr. Olson laid down his ultimatum: "Either you, the airports, need to make off-airport operators shoulder their fair share of the costs, or you need to limit their access to the customers for whom we pay you such a high price."

In other words, Mr. Olson is complaining that competition from off-airport rental car companies is making it difficult for on-airport rental car companies to increase their prices indiscriminately. In order to eliminate the problem, Mr. Olson suggests that the airport authorities should either force price increases by imposing substantial additional costs on off-airport rental car companies or erect other artificial barriers to restrict the ability of off-airport rental car companies to compete for the business of deplaning customers.

Mr. Olson, understandably, would like to return to the days of three car rental companies and high rates. But I submit, Mr. Chairman, that something is wrong with our antitrust laws when this type of activity is permitted to succeed.

Regrettably, the Hertz Corporation has done more than promote these fees to airport authorities. In 1988 Hertz, Avis, and National petitioned the Federal Trade Commission to set aside the 1976 FTC consent order, but withdrew their petition in the face of opposition from Thrifty and other off-airport car rental companies.

By threatening competition, gross receipts access fees threaten the very existence of the independent small business men and women who operate not only the Thrifty car rental network, but make up the bulk of the off-airport car rental industry. Not only do these fees jeopardize the small businesses already in existence, they create almost insurmountable barriers to the many small businesses who are trying to enter the car rental market.

Enactment of S.1822 is needed to ensure that off-airport businesses have a forum that will examine the most egregious of these practices. Airports argue that they can violate the antitrust laws because they are immunized by the so-called state action doctrine. If that is the case, the law should be changed. There is no reason why airports should not be prohibited from imposing an unreasonable and unjustly discriminatory tax, fee, or condition where it can be shown that such tax, fee, or condition would substantially lessen competition or create a monopoly.

You will hear arguments that gross receipts fees against off-airport businesses are needed to finance airport improvements. But that cannot be a justification for imposing unfair and unjust discriminatory taxes. The aviation side of the airport is subject to a statutory "reasonableness" standard, while the ground side is not. Moreover, it is unclear how much revenue that is generated by these fees is used to finance airport improvements. Many airports are so-called "single cash register" airports with residual cost financing in which every new dollar raised from non-aviation activities, by contract, is used to reduce landing fees, rather than improve airport facilities.[6]

The overwhelming unfairness of airport pricing is demonstrated best by the Consumer Federation of America finding that, at virtually all of the airports imposing gross receipts fees, small planes are allowed to land and park for free, and that many of these airports collect more revenue from fees on auto rental companies than they do from landing fees.[7]

Economists agree that below cost prices of aviation services, such as landing fees, and above cost prices of non-aviation services, such as car rental access fees, provide incentives that distort the sensible use of scarce resources. As long as off-airport businesses are being taxed unfairly, we have the right to question why airports price non-aviation services at monopolistic levels to make up for revenue lost by the pricing of aviation services at below cost levels.

These price distortions affect everyone, including the airports. I note with some irony that the AAAE has written to the aviation committees in Congress complaining about anticompetitive pressures at hub

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6. Congressional Budget Office, Financing U.S. Airports in the 1980's, April 1984 at p. 29.

7. CFA Study at p. 2.

airports.[8] Not only do these pressures result from the failure to adopt cost-based pricing, but I hope they demonstrate to you and to the airports what happens when anticompetitive practices go unchecked.

Professor Alfred E. Kahn, the father of airline deregulation, also studied the economic effect of gross receipts taxes, and his conclusion probably sums up my statement best: "We observe that ... gross receipts charges for access are grossly discriminatory among both car rental agencies, suppliers of other airport-associated services, and air travelers; and that they clearly are a threat to the competition that Congress has declared as the goal of its policy in both the antitrust laws and in the Airline Deregulation Act of 1978. They are unfair, economically inefficient, and against the public interest, by any criterion that we are able to conceive."[9]

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8. See, Travel Weekly, Jan. 9, 1989 describing Dec. 21, 1988 letter from AAAE President Robert H. Waddle to members of Senate Commerce and House Public Works committees.

9. Kahn, The Economics of Airport Access Fees, August 5, 1988, at 17.

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Thrifty Car Rental

May 15, 1990

Senator Howard M. Metzenbaum
Chairman, Subcommittee on
Antitrust, Monopolies, and
Business Rights
Senate Committee on the
Judiciary
SH-308 Hart Senate Office
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Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the officers, employees, licensees, suppliers and the customers of Thrifty Rent-A-Car System, Inc., I want to thank you for chairing the hearings on S.1822, the proposed "Fair Airport Access Assurance Act." I am enclosing the answers to the questions submitted to me by Senator Thurmond. In addition, I would like to offer the following brief comments on several questions that arose during the hearing.

1. One of the airport representatives noted that the on-airport car rental companies bid for exclusive contracts, and that these contracts have periods of from three to five years. Actually these contracts are normally for much longer periods. For example, one of the airports represented at the hearing, Phoenix Sky Harbor International Airport, is currently receiving bids for on-airport car rental concession contracts with ten-year terms. Other examples include Dallas/Ft. Worth Airport where bids were first secured when the airport opened in early 1970 with the contract expiring in 1999; in Providence, Rhode Island, the contract began in 1986 or early 1987 with an expiration date of 1995; and again in Boise, Idaho, bids were first let in 1987 with the contract expiring in 2001. In certain cases the terms of the concession agreement have expired but they continue on a month-to-month basis. In the later case, the airports protect on-airport concessionaires by simply failing to put the car rental concessions out to rebid.

2. Mr. Arthur Berg, an attorney for the Port Authority of New York and New Jersey who accompanied the airport witnesses, noted that off-airport companies have the opportunity to oppose gross receipts fees at the local level. Yet, it must be noted that Port Authority, like many airports, is specifically excluded from otherwise applicable state administrative procedure statutes. Indeed, on June 26, 1989, without even a hearing, the Port Authority notified local off-airport operators that they would be required to enter into agreements with the Port Authority by September 30, 1989. These agreements require the off-airport operators to carry massive amounts of insurance, to agree to indemnify and hold harmless the Port Authority from damage claims, and to agree not to move their place of business without the Port Authority's consent. Other such "permits" require a list of all owners and notification of all rates being charged by the off-airport company. In a substantial number of cases the resolution to be passed to enact the fee is not provided to the on-airport companies prior to the meeting and the actual agreement to be signed is provided only days before it is required to be executed. Failure to execute the objectionable agreement has resulted in the airport prohibiting the companies from entering the airport roads. In fact, in one case the off-airport company's van driver was arrested and in another in Austin the van driver was ticketed for stopping in the wrong location while the customer was removed from the van. From the standpoint of S.1822, the most interesting of the Port Authority's requirements, all of which were imposed without a hearing, is the requirement that the off-airport operators services be furnished on a "fair, equal and non-discriminatory basis."

3. The AAAE/AOCI statement asserts that, in addition to paying a percentage of gross receipts, on-airport car companies also pay "fixed rent for the terminal and other airport space they occupy." However, often this is not the case. For example, an in-terminal operator at one of the airports represented at the hearing, the Quad City Airport, pays no additional charge for an in-terminal counter area and thirty-five parking spaces. Additional rent would be paid only if the in-terminal operator agrees to occupy separate service or office facilities on airport property. Furthermore, off-airport companies are always required to pay the gross receipts fee in addition to their other fixed expenses without receiving the advantages given to the car rental companies who are given the privilege of being a tenant of the airport.

Once again, you and your Subcommittee are to be commended for holding hearings on S.1822, legislation that will ensure that small business people and consumers receive a measure of economic justice by requiring that airport fees be reasonable, fair, and non-discriminatory, and such fees will not adversely affect competition.

Sincerely,

THRIFTY RENT-A-CAR SYSTEM, INC.

Wm. E. Lobeck, Jr.
Vice Chairman
Chief Executive Officer

Enclosure

ANSWERS TO QUESTIONS BY SENATOR THURMOND FOR MR. LOBECK

Question 1. Mr Lobeck, in your prepared statement, you state that only off-airport car rental operators pay a gross receipts access fee, not the on-airport operator. That is inconsistent with other testimony we have heard here today, that on-airport companies pay a 10% gross receipts fee, while off-airport companies pay anywhere from 7-10%. Would you please explain who is correct?

Answer. On-airport companies pay the fee voluntarily by bidding for the privilege of being a tenant of the airport, and the bid for on-airport concessions includes paying the greater of a minimum fee or 10% of gross receipts. Off-airport companies pay the fee involuntarily even when their method of business or benefits are not changed. My statement tries to make the distinction between negotiated fees, which the in-terminal companies seek to pay as tenants, and airport-imposed fees, which are mandatory fees assessed against companies located outside the airport's boundaries.

Question 2. Why is it appropriate that off-airport companies should only pay a cost-based user fee, and not contribute to the operation of the entire airport? Who is going to pay for the airport facilities?

Answer. Airport users should pay for airport facilities, and Thrifty believes it should pay for its fair share of the airport facilities that it uses. Its utilization of the airport is identical to the use of the airport by hotel courtesy vehicles and cabs and limousine services. Airport fees can only be fair if airport costs are properly apportioned among airport users, so that every airport user pays its fair share.

I would note that the DOT study estimated that the possible decrease of earned airport income caused by eliminating gross receipts fees on off-airport car rental firms would be 5.3%, but that this was "probably a high estimate" because "this estimate assumes that in addition to the loss of existing off-airport car rental fees there will be a loss of all of the leisure portion of the current level of revenues received from on-airport car rental companies." Moreover, this revenue loss would quickly be replaced by the continued expansion of the on-airport car rental market.

Question 3. Mr. Lobeck, in view of the fact that you are willing to pay some kind of fee, why should the Federal Government get involved? Why isn't this issue strictly a local issue, involving those local authorities who own and operate the airport facilities?

Answer. First, air travelers and off-airport service providers cannot count on the fair resolution of this problem by airport authorities who have an economic stake in the monopolistic position of their concessionaires. The method of the airports actions to date makes this clear - i.e. no studies to determine the appropriateness of the fee, minimal notice, etc.

Second, as quasi-governmental entities, airports argue that they are protected from antitrust litigation. This has left only challenges on narrow constitutional grounds. The courts in applying these low level constitutional tests have been forced to give the airports broad discretion without looking at the economic merits of the cases.

Third, Congress has always been concerned that airports, which, along with other federal aviation programs, received about $5.9 billion in federal funds in 1988, are operated in a fair and non-discriminatory fashion. In 1973, Congress amended the Federal Aviation Act to prohibit state head taxes on air travelers. In 1970 and again in 1982, Congress required airports to be available for public use on fair and reasonable terms and without unjust discrimination. Thus, if Congress had to protect the major airlines from the arbitrary power of airport authorities, it should similarly protect small businesses such as ours. Congress has also been concerned that other modes of federally funded transportation be available without discrimination. Since 1906, Congress has required that the tolls assessed by federally-funded bridges and tunnels be reasonable and just.

Fourth, Congress has an interest in protecting the traveling public and the interstate commerce it represents from the unfair application of local interests of the airport authority. The out-of-town traveler who pays these fees has no local political influence. Congress should also be concerned about the anti-competitive activity of protected monopolies. The so-called state action doctrine, which the airports argue provides them with immunity from the Federal antitrust laws, has been and should be a proper subject of Congressional consideration.

Fifth, Congress helped create the problem by prohibiting head taxes on passengers and limiting the authority to tax airlines. Airport authorities are now looking to off-airport car rental companies for revenue that should properly be apportioned among other airport users.

Senator **Metzenbaum**. Thank you very much, Mr. Lobeck.

Now, Mr. and Ms. Dunlap, I don't know which one of you will be the spokesperson, but we are happy to have both of you with us.

STATEMENT OF HAROLD ROSS DUNLAP, DOLLAR RENT-A-CAR LICENSEE, MONTROSE, CO, ACCOMPANIED BY DOROTHY DUNLAP

Mr. **Dunlap**. Mr. Chairman and members of the subcommittee, my name is Harold Dunlap. I am the owner of a Dollar Rent-A-Car franchise in Montrose, CO. I am here as a proud member of the Dollar Rent-A-Car System which, even though it has over 120 operations on airport, has taken a stand against these excessive fees on off-airport companies, and as a proud member of Americans Against Unfair Airport Fees, a national coalition of rental car companies, parking lot operators, hotels, consumer groups, and others who oppose those unfair fees.

Thank you for inviting me here today to speak of my personal experience with airport fees, access fees, at the Montrose County Airport.

Let me begin by telling you that I am the only off-airport rental company in Montrose Airport. I operate five cars. I have been placed under tremendous financial pressure from the airport in efforts to protect the on-airport companies.

I purchased the Dollar Rent-A-Car franchise at Montrose in 1988. At that time, there were only four car rental counters within the terminal which were already leased out. When I purchased the franchise, the airport informed me that I would have to pay 8-percent gross receipts if I solicited any business at the airport, but no fee would be charged for any of my customers who arrived with advance reservations.

I decided to limit my business to advance reservations, and it would be difficult to compete successfully with on-airport companies if I had to pay an 8-percent fee. Then in May 1989, I received a letter from the airport authorities demanding for the first time that I pay 8 percent of my gross receipts, retroactive to January 1, 1989, for all passengers which came through the airport, whether prereserved or not.

In addition, I was told I would have to pay a flat fee of $400 per year for every car in my rental fleet. Finally, the airport stated that I could not enter the terminal to meet prereserved customers or assist them with their luggage.

Now, let me be fair. Despite all these new restrictions, I did have a direct line telephone at the airport, which I understand is not the case in many other airports which impose these fees. Thankfully, the rights of the telephone were given to the advertising company and I was able to get my phone through them.

Of course, the telephone is located 100 feet away from where the passengers deplane, while the on-airport companies have their counters right in front of the passengers. Perhaps this means that for a time the airport blocked the view of my telephone with an indoor tree; at least then they finally moved the tree.

In any case, we approached the airport about presenting our case that we did not have the money to pay such high fees. The airport says, don't bother, and raised the fee to 15 percent. The airport operators only pay an 8-percent fee, with a minimum monthly requirement of $1,000. In turn, they receive 200 square feet of office space, 10 feet of counter space right in the airport, nine designated parking spaces at the door of the airport, heat, use of the lobby, restroom facilities, among other things.

I pay 15 percent and what do I get? The right to drive on the county road that passes by the airport's front door. The airport has even said that if my customers choose to walk from the airport to my place of business, I will still owe that fee. This means that even if I never set foot in the airport, I have to pay them a fee. This is not fair.

They have created a government-protected monopoly. I realize it is costly to operate an airport, but all who use the facility should pay the bill. I do not object to paying my fair share, but is it fair that I would have to pay 15 percent for the privilege of using the county roads in front of the air terminal to load my customers while my competition pay 8 percent for the use of the airport facility, plus the advantages of being located right in the airport?

Why does the airport have the right to create a monopoly and protect it? I was shocked to learn that the airports, even though they are engaged in commercial activities, are even able to successfully hide behind this status as public entities to evade the scrutiny of the antitrust laws. I never dreamed that such an anticompetitive activity could actually be protected by the laws of the United States.

I have read the Fair Airport Access Assurance Act. What it says is simple and right. There must be a standard in the antitrust laws to ensure that airports do not continue to take advantage of small businesses like my own.

Thank you for allowing me to speak my piece here today, and please pass this legislation. Thank you.

Senator METZENBAUM. Mr. Dunlap, thank you for that very interesting, provocative statement. You may become a registered lobbyist around here because you are about one of the few witnesses that ever finished right on the button when the red light went on. [Laughter.]

Now, how many cars did you say you have?

Mr. DUNLAP. Five.

Senator METZENBAUM. You have five cars in your total fleet?

Mr. DUNLAP. Yes, sir. I would have doubled my fleet if this tax—I have stopped any growth because I can't stand this tax. There is absolutely no way. I am staying with it just to say that I am going to stay through to see the tax not there.

Senator METZENBAUM. I want to normally ask questions at the conclusion of the panel. But, Mr. Tschirhart, do you feel any sense of uncomfortableness in this man's situation? He pays 15 percent, he is off the airport, he has got five cars. You are on the airport; you are only one of four that is on the airport. He is the typical case of the all-American small business entrepreneur really getting shafted, and I was just wondering it if it caused you any uncomfortableness.

Mr. TSCHIRHART. If he is paying 15 percent at Montrose, sure, I feel uncomfortable. I am not sure what we are paying Montrose, so I cannot answer that question directly.

Senator METZENBAUM. He says 8 percent.

Mr. TSCHIRHART. However, that is an issue that should be addressed, and I am comfortable that there are remedies available to this gentleman under local law. I might add that——

Senator METZENBAUM. Wait a minute. What remedies are available? Let us assume you represented him. What remedies are available to him? What can he do?

Mr. TSCHIRHART. Well, sir, I would assume, you know, he could bring an action under—I don't believe he has brought any litigation in Colorado under equal protection.

Senator METZENBAUM. Mr. Tschirhart, let me tell you, I practiced law and when I go out to hire a lawyer now I am overwhelmed at what I have to pay to hire a lawyer because it just blows my mind what legal fees are. I don't see how anybody conceivably could afford to hire a lawyer who has got a five-car rental car fleet.

Mr. TSCHIRHART. Well, two responses to that, sir.

Senator METZENBAUM. Second, he would probably lose. You indicated in the testimony that five cases have been brought and they have all been lost.

Mr. TSCHIRHART. Well, no case has been brought challenging a 15-percent imposition of a fee, and I think that raises perhaps a different issue. Also, he may very well have political remedies.

I might add, however, though, that this legislation would provide a great incentive for mass antitrust litigation that would burden the costs of a lot of people, including airports and other involved companies. So the focal point of this legislation is to increase litigation, and yet I believe you are quite correct that it is an expensive matter to bring litigation.

I might also add that a Colorado case, Senator Metzenbaum, specifically has held in Grand Junction under Colorado law in State court that the fees being imposed are not taxes, so that there is a standard. These are not taxes in Colorado.

Senator METZENBAUM. I don't know why you are getting into whether they are taxes or not. I am just asking you as a human being, as the senior vice president and general counsel of Hertz, if you are not uncomfortable with him paying 15 percent and you are paying 8 percent.

Mr. TSCHIRHART. Yes, sir, I am, but the remedy is not legislation. The remedy is political in nature at a local level or judicial in nature at a local level. It does not require an amendment to the antitrust laws, sir.

Senator METZENBAUM. Would Hertz be pleased to help him pay at least no more than you are paying?

Mr. TSCHIRHART. I cannot answer that today, sir. [Laughter.]

[The prepared statement of Mr. Dunlap, along with additional material, follow:]

STATEMENT OF HAROLD ROSS DUNLAP

Dollar Licensee, Montrose, Colorado
before the
Antitrust, Monopolies and Business Rights Subcommittee
of the Committee on the Judiciary
United States Senate

APRIL 24, 1990

Mr. Chairman, and members of the Subcommittee, my name is Harold Dunlap. I am the owner of a Dollar Rent A Car franchise in Montrose, Colorado. I am here as a proud member of the Dollar Rent-A-Car System which, even though it has over 120 operations on-airport, has taken a stand against these excessive fees on off-airport companies, and as a proud member of Americans Against Unfair Airport Fees, a national coalition of rental car companies, parking lot operators, hotels, consumer groups and others who oppose these unfair fees. Thank you for inviting me here today to speak about my personal experience with airport access fees at the Montrose County airport.

Let me begin by telling you that I am the only off-airport rental car company at the Montrose County airport. I operate five cars. I have been placed under tremendous financial pressure from the airport in their efforts to protect the on-airport companies. I purchased the Dollar Rent A Car franchise at Montrose in 1988. At that time there were four car rental counters within the terminal which were already leased out. When I purchased the franchise, the airport informed me that I would have to pay an 8% gross receipts fee if I solicited any business at the airport but no fee would be charged for any of my customers who arrived with advance reservations. I decided to limit my business to advance reservations as it would be difficult to compete successfully with the on-airport companies if I had to pay an 8% fee.

Then, in May, 1989, I received a letter from the Airport authority demanding for the first time that I pay 8% of my gross receipts retroactive to January 1, 1989, for all passengers which came through the airport, whether pre-reserved or not. In addition, I was told that I would have to pay a flat fee of $400 per year for every car in my rental fleet. Finally, the airport stated that I could not enter the terminal to meet pre-reserved customers or to assist them with their luggage.

Now, let me be fair. Despite all these new restrictions I did have a direct-line telephone at the airport, which, I understand, is not the case at many other airports which impose these fees. Thankfully, the rights to the telephone were given to an advertising company and I was able to get my phone through them. Of course, the telephone is located about 100 feet away from where the passengers deplane while the on-airport companies have their counters right in front of the passengers. Perhaps it means something that for a time the airport blocked the view of my telephone with an indoor tree. At least they finally moved the tree.

In any case, we approached the airport about presenting our case for why we should not have to pay such high fees. The airport said "don't bother" and raised the fee to 15%! The on-airport operators only pay an 8% fee with a minimum monthly requirement of approximately $1000! In return, they receive 200 square feet of office space, 10 feet of counter space right in the airport, 9 designated parking spaces at the door of the airport, heat, use of the lobby area and restroom facilities,among other things! I pay 15% and what do I get? The right to drive on the county road that passes by the airport's front door! The airport has even said that if my customers choose to walk from the airport to my place of business, I will still owe the fee! This means that even if I never set foot on the airport, I have to pay them a fee. This is not fair!

Moreover, the airport fee is imposed in a discriminatory fashion. For instance, a curb service permit costs $100 per quarter for a cab, or $150 for a van. Taxi services and hotels do not have to pay a percentage of their revenues to the airport. The airport has provided no logical reason why I pay 15% of my gross receipts plus a large flat fee, while cab drivers for the same rights pay only a much smaller flat fee. What the airport has told me is that they are imposing this huge fee to protect the on-airport car rental companies. They are creating a government-protected monopoly.

I realize that it is costly to operate an airport; and that all who use the facility should help to pay the bill. I do not object to paying my fair share. But is it fair that I have to pay 15% for the privilege of using the county road in front of the terminal to load my customers, while my competitors pay 8% for the use of all the airport facilities plus the advantages of being located right in the airport? Why does the airport have the right to create a monopoly and protect it? I was shocked to learn that the airports, even though they are engaged in commercial activities, are often able to successfully hide behind their status as public entities to evade the scrutiny of the antitrust laws. I would never have dreamed that such anti-competitive activity would actually be protected by the laws of the United States.

I have read the Fair Airport Access Assurance Act. What it says is simple and right. There must be a standard in the antitrust laws to ensure that the airports do not continue to take advantage of small businesses like my own.

Thank you for allowing me to speak my piece here today. Please pass this legislation.

DOLLAR RENT A CAR

O Dunlap & Sons, Inc. — Licensee
Dollar Rent A Car
1520 North Townsend
Montrose, Colorado 81401
(303) 249-3770

Senator Howard M. Metzenbaum
United States Senate
Washington, D.C. 20510

Dear Sir;

Enclosed is an answer for Senator Thurmond's question.

We are also enclosing any recent clippings from our local paper that you might be interested in reading.

We appreciate the opportunity of testifying before your committee.

If there is any way that we can help with any information in the future, please feel free to call on us.

Sincerely,
Lloyd & Dorothy Dunlap

United States, Canada, Latin America, Caribbean, Europe, Mid-East and Africa

QUESTION BY SENATOR THURMOND FOR MR. DUNLAP

1. Mr. Dunlap, have you raised any of your complaints with your state legislature, or your state airport authority? What kind of response have you received from them?

Yes, Mr. Thurmond we have contacted city, county and state government officials and no one is interested in doing anything for us. Thus far this committee is the only ones that have even listened.

Sincerely
Harold & Dorothy Dunlap

MONTROSE COUNTY
AIRPORT AUTHORITY

August 14, 1989

Mr. Harold Dunlap
Dollar Rent-A-Car
1520 North Townsend
Montrose, Colorado 81401

Dear Harold:

I have been instructed by the Montrose County Airport Authority Board to contact you and request payment of the 8% off-airport car rental fee for January 1989 through June 1989. The figures you reported to the Board for June and July 1989 are not broken down by month, but I will assume that approximately half of the revenue was generated in each month. That figures out to $8,404.25 in revenue from January 1, 1989 through June 30, 1989 at 8% and would figure out to a commission payment of $672.34. The balance due for July 1989 would be $2,023.10 figured at 15% or $303.47.

I would at this time request payment of $975.81 for operations from January 1, 1989 through July 31, 1989 generated from airport customer revenues. I would further request payment at the rate of 15% on all future airport rentals on a monthly basis by the 15th of the following month.

Your car rental operation, Dollar Rent-A-Car, is an off-airport car rental franchise and as such restricts you to pick up and deliver at the curb and does not allow you to enter the terminal to contact your customers. It also restricts you to parking in the off-airport rental car and taxi parking until which time you contact your customer. Then you may pick them up at the curb.

If you have any questions, please contact me.

Sincerely,

[illegible] F. Karl
[illegible]

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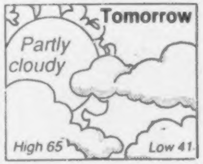

Montrose car-rental firm's gripe could alter laws

Nancy Lofholm
Daily Sentinel

MONTROSE — Arguments between a tiny Montrose car-rental agency and the Montrose County Airport are being highlighted in a national push to legislatively change the way airports do business.

Harold and Dorothy Dunlap, owners of a five-car fleet Dollar Rent-A-Car business, testified two weeks ago before a U.S. Senate Subcommittee on Antitrust, Monopolies and Business Rights supporting legislation that would prohibit airports from unfairly levying charges against businesses that provide off-site services for airports.

Dunlap has been wrangling with the issue because the Montrose airport charges him 15 percent of his gross revenues, while it charges 8 percent to car companies that rent space in the terminal.

Even though they pay the fees, Dunlap and off-site taxis are prohibited from entering the Montrose terminal to conduct business with passengers.

Greg Smith, an attorney with the Americans Against Unfair Airport Fees, said the situation at the Montrose airport represents what may well be the most extreme case of alleged discriminatory fees at any airport in the country.

"There is no possible rationale here for charging a fee twice as high as that for on-site users," Smith said. "Montrose County's airport represents the most extreme example of using fees, not to generate revenues, but to protect on-site companies."

Currently, the four car-rental companies that rent space in the Montrose airport pay 8 percent of their gross fees based on an annual gross of $159,600.

Montrose airport manager Dave Karl said that minimum gross was not met by any of the rental companies last year, so some of their fees actually totaled as much as 35 percent of their gross.

But Dunlap argued before the Senate committee that the fee, which amounts to approximately $1,000 a month, gives the companies office, counter and parking space at the airport.

The Montrose airport advised Dunlap early on in this 2-year-old dispute that if customers choose to walk from the airport to his business, he still would have to pay the fee.

Jeff Wendland, manager of Grand Junction's Walker Field Airport, called the bill "very dangerous legislation. It would be very damaging to airports' ability to finance operations and collect fees from users."

The Montrose Daily Press

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Dunlaps testify in D.C. on airport

By LISA BURUM
Daily Press Staff Writer

A Montrose couple recently returned from Washington D.C., where they were called to testify before the Senate subcommittee on antitrust, monopolies and business rights because of their battle with the Montrose County Airport Authority.

Harold and Dorothy Dunlap have been fighting the county airport authority for nearly a year now over the charges their five-car rental fleet is assessed.

The subcommittee is considering Senate Bill 1822, The Fair Airport Access Assurance Act, which is intended to protect small businesses and consumers from unfair airport access fees.

Last July, after the Dunlaps had been in business several months, they received notification from the airport authority that they would have to pay an 8 percent commission for all customers who came through the airport, retroactive for the previous six months.

Then in August they were notified the percentage assessed by the airport authority would climb as of the previous month to 15 percent — the highest off-site fee charged in the nation.

On-site rental agencies in Montrose pay 8 percent of their gross fees based on an annual gross of $159,600. Because business has not been particularly good, David Karl, airport manager, said the fee actually amounted to between 19 and 30 percent of the business done last year by the on-site agencies.

Karl, who is also a member of the authority, said the charges to off-site car-rental companies are standard practice throughout the nation, and that the authority's transportation committee had agreed on the figures after studying other airports.

In light of the fact that the rate charged in Montrose is the highest in the country, Karl said it is still fair to the Dunlaps because they don't do a significant amount of business at the airport.

"I feel it's fair for the amount of business that he's doing from the airport," Karl said. "If his volume increased I think the airport authority would look at reducing that percentage."

Karl said he is opposed to the Senate bill. If it does pass, it could threaten the ability of airports everywhere to meet their operating expenses, he said.

The rates charged off-site car rental agencies varies dramatically, even in Colorado. Stapleton International Airport in Denver charges off-site rental agencies according to the size of the vehicle used to pick up customers, and the number of visits, according to an airport spokeswoman.

The Walker Field Airport in Grand Junction charges off-site car rental agencies 10 percent of the gross business generated at the airport.

The Dunlaps think the fee is random, and are concerned that there is little or no control throughout the nation on what airport authorities can charge.

"There's nothing to prevent (the airport authority) from raising it to 30 percent in October, 40 percent in November and so on," Mrs. Dunlap told the Montrose County Commissioners several months ago.

The commissioners, who appoint members to the authority, declined to get involved, however, as did the city council, and almost every other authority the Dunlaps have appealed to.

The two are frustrated. After they had no luck with the county commissioners and the city council they said they brought the problem before the state legislators to no avail, then Colorado's national representatives, and the two Colorado U.S. senators will not help them.

A letter from Sen. William Armstrong's office indicated that he thought the issue should be resolved on a local level, and a spokeswoman from Sen. Tim Wirth's office said he also believes the issue should be resolved locally.

Both Wirth and Armstrong are opposed to the Fair Airport Access Assurance Act.

U.S. Rep. Ben Nighthorse Campbell has not taken an official stance on a similar bill in the house, a spokeswoman from his office said.

Still, the Senate subcommittee somehow heard about the Dunlaps plight and asked them to testify at the hearings April 24 on the bill which would prohibit local governments from imposing "unreasonable" or "unjustly discriminatory" taxes, fees or conditions on off-site commercial users where the effect of the tax, fee or condition would be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Dunlap said he was asked to be one of five individuals testifying before the committee because "we were picked out as the worst scenarios in the United States ... It's a dubious honor."

Among the others giving testimony were executives and lawyers from several large car rental companies.

"I have been placed under tremendous financial pressure from the airport in their efforts to protect the on-airport companies," Dunlap told the subcommittee in a written report.

"I pay 15 percent and what do I get? The right to drive on the county road that passes by the airport's front door. The airport has even said that if my customers choose to walk from the airport to my place of business, I will still owe the fee ... this is not fair."

"They are creating a government-protected monopoly," said Dunlap, by protecting on-site car rental agencies.

He urged the committee to support the bill. "There must be a standard in the antitrust laws to ensure that the airports do not continue to take advantage of small businesses like my own."

Senator **Metzenbaum**. Mr. Shailer, please proceed. It is good to have you with us, sir.

STATEMENT OF PHILIP S. SHAILER, SENIOR VICE PRESIDENT, ALAMO RENT-A-CAR, INC., FORT LAUDERDALE, FL

Mr. **Shailer**. Thank you, Mr. Chairman. Good morning. For the record, my name is Phil Shailer, senior vice president of Alamo Rent-A-Car from Fort Lauderdale, FL. We thank you, Mr. Chairman, for holding this hearing and for the opportunity to testify.

Mr. Chairman, you have heard from Senator Ford earlier this morning that the Senate Aviation Subcommittee held a hearing on proposed legislation to forbid airports from imposing fees which are unreasonable and discriminatory back in September 1987. As the Senator said, they chose not to act on the bill because they viewed this as a local issue not warranting Federal intervention.

To the extent that this issue was ever a local issue, and I respectfully would disagree even with that characterization, it is certainly not a local issue today. It is not a local issue because the Hertz Corp., the airports, and the trade associations representing the airports have made it a national issue.

In 1987, there were approximately 10 airports which had gross receipts fees in place; today there are more than 80. This did not happen, Mr. Chairman, simply by independent, separate, and careful consideration of this issue by the individual airports. But, rather, it is the direct result of Hertz lobbying the airports and their trade associations to put these gross receipts fees in place.

Indeed, the airports, through their trade associations, have actually conducted seminars around the country on how to implement gross receipts fees and other inhibitions on the off-airport competition who compete with their on-airport concessionaire partners. Such behavior, if engaged in by commercial enterprise, would be tantamount to unlawful anticompetitive activity.

In most airports, Mr. Chairman, only a small number of on-airport concessions are awarded, generally five or six. Further, substantial minimum annual guaranteed concession fees, sometimes in the millions of dollars, are necessary to win an award. These barriers to entry simply prevent all but the biggest companies from going on airport as on-airport concessionaires.

Hertz and the airports would simply say, let each off-airport company bid. I think we heard one of the gentlemen this morning from the Phoenix airport saying everyone can bid and come aboard as a concessionaire. But as they well know, in order to bid a huge minimum guarantee, you had better have a large, multilocation fleet and a national reservations system to support you and back you up.

Hertz has the backing of hundreds of thousands of cars in more than 1,400 U.S. locations. Many off-airport companies operate in only one airport and with a very small number of cars. Mr. Chairman, that is why we are here before the Senate Antitrust Subcommittee and not before the Commerce Committee. These are restraint on competition issues.

What Senate bill 1822 seeks to do is to take away the airports' shield of antitrust immunity in very limited circumstances, and then only to allow injunctive relief. It simply requires that any airport that charges unreasonable and unjustly discriminatory fees will not have the benefit of antitrust immunity.

We are here because the current state of the law gives airports unbelievably, in the interest of revenue generation, the unfettered right to discriminate. The airports and Hertz would have you believe this legislation is something new, dangerous, and precedent-setting. However, as they are certainly well aware, and as you yourself, Mr. Chairman, pointed out in your opening remarks, since 1982, Federal law has required airports to treat airlines upon, quote, "fair and reasonable terms and without unjust discrimination," end of quote.

It is ironic, Mr. Chairman, that the airports' largest customers, the airlines, are protected under Federal law from unreasonable fees even though they possess considerable financial leverage in their business relationships with the airports. Should not Congress provide similar protection, at least for anticompetitive conduct, for the airports' much smaller customers, the off-airport companies?

Hertz and the airports argue that there is no longer any significant advantage in being an on-airport concessionaire. This assertion is ludicrous. The advantages of operating on-airport are numerous and substantial.

Do these advantages really exist? If these are not real advantages, Mr. Chairman, then why does Hertz continue to bid millions of dollars to be on airport in virtually every city throughout these United States?

Hertz would have you believe that these fees do not have an impact on competition. However, its intention in everything it does is to narrow our one competitive edge, that of price. It wants to force up the prices we, the off-airport companies, charge to the consumer so that it can increase its prices and improve its profitability.

Mr. Chairman, the airports claim that they fear vexatious litigation. This has simply not been the case in those airports that have chosen to enact reasonable fees, such as in Orlando, Minneapolis-St. Paul, and Fort Lauderdale. If airports only impose reasonable and not unjustly discriminatory fees, no one is going to sue.

Mr. Chairman, we recognize airports have legitimate revenue needs, and we have always been willing and prepared to pay our fair share in a fair and balanced manner. Unfortunately, an increasing number of airports at the urging of Hertz have lost sight of any concept of fair play. There is a clear need for S. 1822 to ensure that off-airport companies and the consumers they serve get a fair deal.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Shailer, along with additional material, follow:]

Statement of Philip S. Shailer
Senior Vice President, Alamo Rent A Car
before the
Subcommittee on Antitrust,
Monopolies and Business Rights
Committee on the Judiciary
United States Senate
Washington, D.C.
April 24, 1990

Mr. Chairman and members of the Subcommittee, my name is Phil Shailer and I am Senior Vice President of Alamo Rent A Car. I thank you for holding this hearing and for this opportunity to testify.

The issue before this subcommittee today, whether or not airports should be limited by federal law to being able to impose only reasonable and non-discriminatory access fees on off-airport companies, has exploded in importance in recent years. Three years ago we knew of only 8 airports which imposed gross receipts fees - the most onerous form of access fee - on off-airport companies. According to a recent survey conducted by the American Association of Airport Executives, 77 airports now impose these fees, with 59 of these imposing fees ranging from 7 to 15% of gross receipts.

You should be aware that Alamo is on-airport at a quarter of its locations, and we plan to continue to go on-airport. Nonetheless, like Dollar Rent A Car which is on-airport at most of its locations, we vigorously oppose these fees because they are anti-competitive and just plain wrong.

The effect of these fees is to stifle competition and drive up prices, to the detriment of small businesses and the traveling public. Of course, off-airport companies should pay for the services they receive from the airport. We are willing to pay a reasonable fee intended to recover the cost of road repair, traffic control and other costs associated with the use of shuttle vehicles on the public roadways of the airports. However, airport after airport is imposing high gross receipts fees, which have no basis in the service provided to the off-airport companies. The airports' primary reason for imposing these fees is to enhance and protect the position of the large on-airport rental car companies, with whom they have close contractual ties that are tantamount to joint venture arrangements. With on-airport companies voluntarily contracting to pay a percentage of their gross receipts, usually 10%, for the numerous benefits associated with being located on the airport premises, it is patently unfair that the airports impose substantially the same fee on the off-airport companies. We have challenged these fees in the federal courts, but all too often the airports have been protected by their quasi-governmental status which they have used to claim immunity from the antitrust laws. It is vital that Congress act now to establish a standard of fairness which would govern the implementation of these fees.

We all recognize that the airports have legitimate revenue needs. Nonetheless, those needs should not be used as an excuse for the imposition under their antitrust immunity of exorbitant and discriminatory access fees which would threaten the viability of an important part of the nation's transportation network -- the off-airport companies. The off-airport rental car companies move as many as 25 to 35 people at a time off the congested airport premises in clean, well-maintained buses, and provide them with new cars at reasonable prices. By comparison, taxicabs average 1 or 2 passengers and, as we all know, are not exactly pristine! We are providing a valuable service and only ask that we be allowed to compete fairly.

The small off-airport companies are not powerful players at the airports. Because of this they are being taken advantage of by a growing number of airports. By contrast, the airlines are already protected from unreasonable or discriminatory landing fees under federal law. Thankfully, a number of airports have reviewed the equities and have chosen to charge reasonable user fees, usually based on a flat rate per trip by each courtesy van or per rental contract. For instance, Salt Lake City International charges all users of the airport's public roadways 25 cents per trip, and Minneapolis-St. Paul charges a $1.50 per contract. However, this is not the trend. The Fair Airport

Access Assurance Act is a narrowly tailored bill which would establish a standard that would protect small off-airport companies and the consumer. This bill does not forbid airports from imposing fees, but would simply require that these fees be reasonable and non-discriminatory. Under its provisions companies could seek an injunction to stop imposition of unreasonable or discriminatory fees, but could not seek monetary damages.

Today I would like to describe the nature and spread of excessive airport access fees, why these fees as implemented are unfair, how competition has developed in the car rental industry with an emphasis on how these fees have an anti-competitive effect, how high minimum guaranteed payments to the airports are substantial barriers to entry of smaller companies and, finally, the need for federal legislation to establish a standard to stop price fixing under the protective umbrella of airport antitrust immunity.

I. Airport Access Fees

Increasingly, in the last few years, airports have been imposing gross receipts fees on rental car companies which operate off-airport and use courtesy vehicles to pick-up and discharge pre-reserved customers at the airport. As I mentioned, there are currently 77 airports which impose gross receipts fees, with over 59 of these imposing fees ranging from seven to fifteen percent. Three years ago, only 8 airports imposed such fees.

Gross receipts fees reflect neither actual use made of the airport by off-airport companies, nor the services provided by the airports to these companies. They are imposed to protect on-airport concessionaires at the expense of small businesses and the traveling public. In return for payment of the fees, an off-airport company secures the right to operate a courtesy van on the airport's public roadways. By contrast, on-airport companies, such as Hertz, voluntarily contract with the airports to pay a percentage of their gross receipts, generally 10%, for the right to have an on-airport counter, close-in parking lots and turn-around facilities, prominent advertising at the airport and ready access to arriving passengers.

The Airport Operators Council International (AOCI) and especially the American Association of Airport Executives (AAAE) are the trade associations for the airports. Through workshops and other means, they have promoted the imposition of these fees. These actions, if conducted by normal commercial enterprises, would violate the antitrust laws. Additionally, Hertz, a major on-airport rental car company, has actively encouraged these fees through letters to airport directors, presentations at public hearings and at conventions under the auspices of AAAE. Of course, Hertz is also appearing before this subcommittee today. Under pressure from Hertz, AOCI and AAAE, these fees are spreading rapidly.

In general, the enforcement of the fees is tied to the courtesy vans operated by off-airport businesses to pick up and discharge their customers at the airports. Either the fees are paid or the courtesy vans are denied access or impounded. Nonetheless, several airports including Tampa, Orlando, and the New York and New Jersey Port Authority Airports (Kennedy, LaGuardia and Newark) no longer require even this minimal nexus. These airports only require that a customer must have arrived via the airport within a specific period prior to renting a car. This period varies, depending on the airport, from 18 - 48 hours.

The amount a customer pays as a result of the gross receipts fee has little or no relationship to the actual use off-airport companies make of the airport roads or passenger loading areas. For example, a passenger might rent a car for one week for $100, while another passenger might rent a car for two days for $20. If the airport imposes a ten percent gross receipts fee, the end result is that the first passenger will pay the airport ten dollars, while the second will pay two dollars, although the use of the airport roads and loading areas is the same for both.

The fees are imposed in a discriminatory fashion. Most commonly, the gross receipts fees have been levied only against off-airport car rental companies, though at least four airports have imposed these fees on parking lot operators. We know of no airports which currently impose gross receipts fees on hotels even though they operate courtesy shuttle vehicles to pick-up pre-reserved customers just as the off-airport car rental companies do. The airports explain this discriminatory approach by arguing that hotels already pay a bed tax in most places, and so the addition of a gross receipts fee would be double taxation. (Normally these bed taxes do not fund airport operations.) But rental car companies also pay other taxes peculiar to their industry. In Florida, for instance, there is a $.50/day state tax on every car rental and the Florida legislature currently has before it legislation which would raise this charge to $1.50/day. Louisiana imposes a 9% sales tax when a car is purchased by a rental car company and a 9% tax on each rental transaction thereafter. Many other jurisdictions waive the sales tax but impose a higher tax on the rental transaction in its place (e.g., North Carolina and Maryland both waive the 5% state sales tax but impose an 8% rental tax). There is no rational basis for imposing gross receipts fees on one category of airport user, the rental car companies, and not imposing them on other categories.

One reason the airports advance for imposing these excessive fees on off-airport companies in the first place is their need to generate more revenue. Yet, an examination of airport financing shows that at most major airports in the United States the fees will have no effect on total revenues generated by the airport. For example, Los Angeles and San Francisco are two major airports which have imposed a gross receipts fee in the last six months. Like most major airports, Los Angeles and San Francisco finance their operations through residual cost agreements with the airlines that operate at those airports. These agreements provide that any deficit in the operating cost of the airport will be funded by the airlines and any surplus from the airport's operating budget at year's end will be returned or credited to the airlines. As a result, additional fees imposed on off-airport companies will not result in a net increase of revenue to the airport because the additional fees will be offset by a reduction in the fees the airlines pay. Indeed, the Port of Seattle had a study conducted by Touche, Ross & Co. in November, 1988, which found that in Touche, Ross' review of how 10 airports allocate ground transportation costs among commercial operators, "Where concession or other privilege type revenues collected from [off-airport] commercial operators exceeded ground transportation costs the costs were generally applied to reduce landing fees rather than as a reduction to per trip fees of commercial operators."

II. Airport Access Fees Are Unfair

The access fees imposed by the airports are substantially the same as the fees voluntarily contracted for by the on-airport companies, and yet there are enormous differences between the benefits on-airport and off-airport companies enjoy. For instance:

- On-airport companies are given much greater access to the airport premises and the benefits of a permissive monopoly. Budget proudly advertises nationally that it is "on-airport" at all major U.S. airports. Not only is this access substantially more convenient for pre-reserved customers but also some large car rental companies have indicated that as much as twenty-four percent of their business is from customers who walk up to their counters without a reservation. In contrast, the overwhelming majority of rentals by the off-airport companies are reservations made in advance and not on the airport property, in Alamo's case greater than ninety percent. How important is this walk-up traffic? At Denver, Alamo averages twenty walk-up's per day now that we are on-airport. When we were off-airport we averaged one.

Recently, in a meeting of the airport advisory board in Austin, Texas, Hertz acknowledged that 10% of its rentals were walk-ups, and National acknowledged that walk-ups made up 15% of its rentals. Both indicated that walk-ups were a sensitive and very important part of their business. Indeed, Alamo suspects that it has lost a significant portion of its pre-reserved customers to "pirating" by Hertz and others. For instance, Alamo's "no-show" rate on pre-reserved customers is approximately 25% due to the on-airport companies presence on, and solicitation at the airport. However, when the on-airport car rental companies are out of cars that "no show" rate drops to 5-10%. The on-airport companies take advantage of their on-airport position to solicit our pre-reserved customers as their walk-ups. This phenomenon is exacerbated by the fact that most airports provide minimal signage to guide customers to the courtesy van pick-up spots. This signage almost never carries the name of our company for ease of recognition.

- As a part of their concession agreements some on-airport companies pay minimal rent for counter areas and parking spaces on the airport premises. Off-airport companies must rent or buy land and other facilities at market rates. In Palm Springs, for example, Alamo actually has higher operating costs than the on-airport companies and can only compete by operating on a razor-thin profit margin.

- Because the airports are virtually in "joint venture" relationships with the on-airport companies, they are not neutral landlords. As a result, off-airport companies must comply with severe airport restrictions which, depending on the airport, may include some or all of the following: allowance of only one courtesy vehicle per company on airport property at a time; limited access to passenger pick-up and discharge areas; a strict prohibition on solicitation of business at the airport; a prohibition on advertising within the airport terminal; and a prohibition against any direct line telephone.

- Off-airport companies often must sign lengthy permit agreements before they are allowed to drive on the airport's public roadways. These agreements, which are up to 50 pages in length, require off-airport companies to pay for and provide the airport with a complete audit of their business records and accounts. Additionally, many airports require off-airport companies to purchase comprehensive general liability insurance coverage at levels established by the airport and far above state law requirements. Many airports also require indemnity agreements to hold the airport harmless from any claims no matter how much the airport might be at fault. These requirements may be appropriate when a business is a voluntary concessionaire of the airport, but they are unduly burdensome and costly when imposed upon businesses that do not locate on airport property. The burden is particularly onerous for small, independent businesses.

- Historically, on-airport concessions have been actively sought, especially at the larger airports. However, as a result of extremely high minimum guarantee bids that are often in the hundreds of thousands and can be in the millions of dollars, small businesses have absolutely no chance of winning a concession.

Despite these numerous and significant disadvantages, off-airport rental car companies have been able to compete by offering first rate service and lower prices for cost-conscious vacationers, business people, senior citizens and students. Gross receipts fees, because they are imposed without recognition of the many differences between on- and off-airport companies that I have just described, eliminate the one cost advantage the off-airport companies have enjoyed and distort market forces to the detriment of the consumer.

III. Competition in the Car Rental Industry

Historically, the car rental industry has been, and remains, highly concentrated. The four largest rental car companies - Hertz, Avis, National and Budget - completely dominate the on-airport business with approximately 95% of the national market. Why do only four companies have such a preponderant portion of the airport business? Their dominance has historical roots in the anti-competitive and conspiratorial practices of Hertz, Avis and National - the so-called "Big Three" -- in the early 1970s. In 1975, the Federal Trade Commission (FTC) brought a complaint against the "Big Three" for bid rigging, price-fixing, harassing the smaller car rental companies, and working to establish and maintain other barriers to market entry of such companies. At the time, these three companies controlled 96% of the national airport car rental market. As a result of the FTC action, Hertz, Avis and National entered into a consent decree in 1976 which prohibited them from engaging in a number of practices with the airports. Under this consent decree they could no longer conspire to obtain bid specifications or agreements with the airports intended to prevent off-airport rental car companies from picking up or discharging passengers at the airport; they could not prevent off-airport rental car companies from advertising on the airport grounds or installing direct line telephones at the airport, among other things. The FTC Consent Order concluded that "American consumers have been forced to pay substantially higher prices for the rental of passenger automobiles than they would have had to pay absent respondent's acts and practices." [88 F.T.C. at 270]. Unfortunately, some of the more effective provisions of the Consent Order expired after 5 years, with only a few provisions remaining in force today. Given this history, it is ironic that Hertz is defending again a position which amounts to a restraint on fair competition.

Partly as a result of the FTC Consent Order, competition began to grow in the car rental industry, with commensurate opportunities for small businesses to fill a market niche by offering to the consumer a better price with more diverse services. Now, however, Hertz and the airports want to restore their cozy relationship of bygone years. Frank Olson, the president of Hertz, could not have spoken more clearly than when he addressed the American Association of Airport Executives on May 23, 1988 about the pre-FTC Consent Order days. He told the assembled airport executives: "Car rental companies on airport -- and there were only three of us then -- had exclusive access to the deplaning customer . . . . The public recognized the convenience as an acceptable offset to the marginally higher price. All was well." (Emphasis added.)

Mr. Olson went on to demand that "Either you, the airports, need to make off-airport operators shoulder their fair share of the costs, or you need to limit their access to the customers for whom we pay you such a high price." In Mr. Olson's opinion, either off-airport companies should pay the same fee as his on-airport business, despite the enormous market advantages the on-airport businesses enjoy over the off-airport businesses, or the airport should construct other impediments to prevent or restrict the number of customers to which the off-airport companies have access. Hertz has changed little in its thinking since the days of the FTC Consent Order. Certainly we see little in the actions of Hertz or the airports which would indicate that they want to offer the consumer any real choice.

Hertz frequently argues that gross receipts fees must be imposed on the off-airport companies to "level the playing field." However, Hertz wants to level the playing field in terms of only one element -- operating costs, irrespective of any other market or economic differences. Hertz is not suggesting leveling the playing field with respect to access to the public or equal advertising in the airport terminals.

Of course, Hertz knows that even in the area of operating costs the field would not be level but actually tilt in its favor! Hertz, like Avis and National which are partially owned by car manufacturers, gets especially attractive purchase arrangements for its cars from its corporate sponsor, Ford, which is a major shareholder of Hertz. Smaller, independent rental car companies do not enjoy this advantage. Additionally, only the largest companies have the wherewithal to self-insure for liability and collision. The small rental car company cannot assume such risks. In fact, as an on-airport concessionaire, Hertz enjoys at many airports reduced rates for counter space, parking lots and other facilities as a part of its concession agreement. In Palm Springs, after a gross receipts fee was imposed, because of the special deals for the on-airport operators, Alamo's off-airport operating costs were actually greater than the operating costs for the on-airport companies! To achieve a truly level playing field, one would have to examine and equalize every cost element - something Hertz is not willing to do.

There is a second factor, besides the FTC Consent Order, which has encouraged competition in the car rental industry.

Over a decade ago Congress passed the Airline Deregulation Act of 1978, which promoted competition among the airlines, and, through the resulting lower prices, opened air travel to many new segments of our society. Since 1978, the number of airline passengers has doubled. No matter what you conclude about the results of airline deregulation on the airlines themselves, one success story is true: the off-airport companies, freed by the FTC Consent Order which restrained the "Big Three," prospered in a new market niche - the budget-conscious leisure traveler. This new breed of traveler, largely made up of families, senior citizens and others traveling on a tight budget, did not have corporate credit cards and expense accounts to pay for their rental cars. Instead, they were willing to put up with the added inconvenience of traveling off-airport, if it meant finding a good deal. Without such deals, their travels would either be shorter, or they could not afford to travel at all.

Mr. Chairman, I do not believe that Congress chose to deregulate and encourage competition on the air-side of the airport -- the airlines -- just to have the airports turn around and destroy competitiveness on the ground-side. The off-airport rental car companies grew in proportion to the expansion of low-budget leisure travelers in the wake of airline deregulation in the 1970's. It would be unfair and ironic if Congressional action to promote competition through deregulation of the airlines were to be followed by airport action to shut down competition among ground-side companies through the imposition of unfair and discriminatory access fees.

IV. Airport Access Fees are Anti-Competitive

Without question, excessive access fees change the competitive balance among car rental companies. Hertz would not be here testifying today if it did not believe that the imposition of large access fees on the off-airport companies would substantially improve its own market position, whether through increased market share, as the smaller off-airport companies go out of business, or through the opportunity such fees give Hertz to raise its own rates and thus make its operations more profitable at the expense of the traveling public. Off-airport rental car companies operate on very slim profit margins. Gross receipts fees of up to 15% have a devastating, and sometimes terminal effect.

The Department of Transportation, in a report to the Congress in 1989, found that gross receipts fees would, in fact, change the competitive balance. The DOT study, titled A Review of The Imposition of Gross Receipts Fees on Off-Airport Companies, concluded that:

> "Whatever the amount of off-airport fees, they will have a negative effect on off-airport companies, since the fees reduce or eliminate any cost advantage the off-airport companies may currently enjoy. To the extent off-airport fees result in higher prices for car rental services, such fees will reduce the demand for rental cars. Moreover, when faced with higher

> prices, the discretionary traveler will either not rent a car, rent a cheaper class of car, or rent a car for a shorter period of time. Thus, gross receipts fees are more likely to affect the typical discretionary traveler than they are the typical business traveler."

DOT Study, p. 40. The Federal Trade Commission, commenting on the DOT study, has stated that gross receipts fees on off-airport car rental companies " . . . may be associated with a decrease in the profits of off-airport companies, and a decrease in the number of off-airport car rental companies at a particular airport."

Even studies conducted by the airports themselves acknowledge that these fees threaten smaller businesses. For instance, Peat Marwick did a study for the Hillsborough County Aviation Authority which operates Tampa International Airport. That study concluded that nearly half of the off-airport car rental companies at Tampa Airport were " . . . small agencies that achieve low profit margins" and, therefore, would require special consideration by the airport in the imposition of fees. However, most airports provide no such "special consideration." Of those that do, all provide it in a manner intended to discourage growth and competition with the on-airport companies. For instance, Los Angeles International recently imposed a 7% gross receipts fee on off-airport rental car companies on top of an existing per-trip ground transportation charge. Although the airport provided an exemption for the first $1 million in gross receipts, ostensibly to protect the smallest rental car companies, it effectively imposed a cap on small business growth. The airport is clearly placing a financial impediment on growing or mid-sized companies to discourage them from becoming a threat to the on-airport companies.

Similarly, the Consumer Federation of America released a study in 1988 entitled "Airport Fees for Auto Rental Companies: A Consumer Perspective" which found that excessive airport access fees could cost the consumer price increases totalling "five hundred million [dollars] or more". The CFA report went on to note that off-premises companies, which force pricing competition in the car rental industry, would no longer be able to compete.

V. The Concession Bidding System Prevents Smaller Companies from Coming On-Airport

Because the airports generally limit the number of on-airport concessions to no more than five, the bidding process is all important in determining who will receive the benefits of an on-airport concession. The predominant bidding system awards concessions based on the highest "minimum guarantee" offered by bidders. Under this system, all bidders offer to pay a certain minimum amount or a percentage of their gross receipts, whichever is higher. Even sizeable operators are severely disadvantaged under this system. Alamo has been unsuccessful at getting on-airport at Dallas/Love, Cincinnati and Minneapolis, despite bids ranging from $885,000 to over three million dollars. For smaller, independent companies which do not have a national resource base from which to draw, the minimum bid amount they would have to pay would be far in excess of the typical 10% concession fee. One example of this is Autohost in Minneapolis, which bid $3,201,000 to secure an on-airport concession. Because Auto Host is a small company, with small market share, it is now paying in excess of 30% of its revenues to the airport to maintain its concession. This "minimum guarantee" system essentially precludes most small companies -- and often even larger companies like Alamo, Dollar, Thrifty and General -- from successfully bidding to go on-airport.

Yet another example of how smaller companies are prevented from operating on-airport due to the minimum guarantee bidding system occurred in Charleston, South Carolina. A little over a year ago the Charleston, South Carolina, airport imposed an 8% fee on off-airport companies. A few months ago, concession bids were taken by the airport. Alamo was unsuccessful in gaining a spot on-airport. Additionally, Ace Rent-A-Car, a small, independent operator which currently operates on-airport, lost its concession to Dollar Rent-A-Car. Ace lacked the financial muscle of the larger rental car companies, and instead of paying a 10% concession fee for a prime location on-airport, Ace will now pay an 8% fee to be off-airport. Since there are very few "walk-ups" for the off-airport companies, Ace expects that its business will decline. And since Ace does not have national name recognition, it cannot rely on a large pool of pre-reserved bookings from an extensive network to offset the effect of losing its on-airport concession.

There are other requirements that the airports impose which effectively preclude off-airport companies from bidding to come on-airport. In Jacksonville, Florida, for example, the airport bid specifications required that companies not only bid for counter space, but also for expensive turn-around facilities (where cars are gassed, washed and cleaned) and parking spaces. For off-airport companies which had either bought expensive property near the airport, or were committed to long-term leases, and whose facilities could not be easily converted to another use, the cost of abandoning their property to come on-airport was prohibitive. The New York/New Jersey Port Authority, which operates Kennedy, LaGuardia and Newark Airports, requires that any company seeking an on-airport concession must do so for all three airports. The sheer cost of establishing operations at all three of these major airports, virtually precludes access for all but the largest car rental companies. Additionally, this requirement forces companies located in only one of the states, either New Jersey or New York, to open operations in the other state. Sacramento is a case of a "Catch-22". At the Sacramento Airport the bids expired several years ago and no new bids have been opened.

Because the Sacramento Airport has a huge "green belt" around it, it is not feasible to operate an off-airport rental car business and yet it is impossible to get a concession on-airport.

The intent of the airports can be seen in other aspects of the bidding process. For instance, Los Angeles, Sarasota, and nearly every other airport which opted to impose gross receipts fees first accepted bids on multi-year (usually five year) concession contracts and then a year or two later changed the business environment by imposing high gross receipts fees on the off-airport companies. Suddenly off-airport companies, which a year or two earlier chose not to bid or, for the reasons outlined above, were forced out of the bidding process, now discover that the airports plan to tax them heavily, yet they cannot even try to get on-airport until the next bid term arises some 3 or 4 years later. If they had known about the gross receipts "tax" when the bids were offered, those off-airport companies which made the business decision not to bid, might have chosen otherwise, and those which bid and lost might have bid higher to get on-airport. They might have done this even if it meant desperately cobbling together the necessary financing, rather than face the possibility of being put out of business by the airport access fee.

As long as the airports limit the number of companies which can operate on-airport it is patently unfair for the airports to charge off-airport companies substantially equivalent fees to those paid by the on-airport companies while not providing substantially equivalent service.

Mr. Chairman, I can give you an example of an airport that imposed what we believe to be an excessive fee, and which we have opposed, yet at least had the decency to extend the option to come on-airport to virtually all the rental car companies if they so choose. This airport is Denver, where 15 rental car companies operate on-airport, including Alamo, and 4 operate off-airport. As we understand it, Denver is likely to open up space for these 4 to come on-airport in the near future.

Denver originally tried to impose a gross receipts access fee. However, we were able to show the airport that under Colorado law such a fee was clearly a tax, which the airport was not authorized to levy. In its place the airport imposed a multi-tiered system of fees based on the number of transactions conducted by an off-airport rental car company. Under Denver's fee system, an off-airport rental car company which has fewer than 1500 transactions per month must pay a $6.00 fee per transaction. If the company does more than 1500 transactions per month the fee is $10.00 per transaction. Conceivably, on a one-day $19 car rental, the fee would be in excess of 50% of the total transaction! There is clearly no rational reason for this higher rate since the usage of the airport per transaction remains the same. (Of course, this is also true under gross receipts fee systems where the fee is higher for customers who rent larger cars or for a longer term, even though the off-airport company's contact with the airport still only involves one trip on the courtesy van.) Clearly, Denver's multi-tiered system, which imposes a higher per transaction charge as the number of transactions increases (entirely counter to most marketing arrangements) is intended to discourage off-airport companies from growing and becoming a threat to the on-airport companies. Additionally, in Denver, the courtesy van stop for the remaining off-airport companies is positioned such that customers must carry their luggage, which often includes heavy ski equipment, nearly 200 yards.

To Denver's credit, as I said a moment ago, unlike nearly every other airport in the United States, it has allowed virtually every off-airport company to come on-airport, if they so desire. As a result there are 15 companies on-airport with more likely to join them in the future. This is 10 more than most airports allow. And though Denver's fee is still unfair and discriminatory, Denver's policy is brilliant since it not only eliminates two of our most powerful arguments -- first, that it is unfair to charge similar fees to both on- and off-airport companies when the off-airport companies do not even have the choice to come on-airport, and second, that the minimum bid system unfairly discriminates against smaller companies -- but also allows Denver, through contracts voluntarily entered into by the on-airport rental car companies, to receive a gross receipts fee of 9% from nearly every car rented by someone who passes through the airport. You know who must really hate the Denver system? Hertz! Which now must compete on a truly level playing field!

VI. Airport Access Fees Hurt the Consumer

Off-airport rental car companies offer substantial savings over their on-airport competitors. Gross receipts fees can negate these savings. The Consumer Federation of America has estimated that consumers could pay up to $500 million more if all airports impose a gross receipts fee. However, the costs in the long run will be even greater because this calculation does not take into account the probable increase in prices as a result of decreased competition. When off-airport companies are forced to raise their prices, the on-airport companies will be able to raise their own and still maintain, or even increase their market share. As the higher fees make the off-airport companies less competitive, the smaller companies will be forced out of business and the industry will once again be concentrated in the hands of a few large companies in partnership with the airports. These large companies, which already dominate the market, will have even less incentive to provide "value pricing."

In the past, the airports have attempted to argue that off-airport rental car companies are actually more expensive than on-airport companies. The Hillsborough County Airport Authority (Tampa Airport) directed a study to prove this very point. The study priced the cost of one category of rental car customer - the unreserved walk-up - even though the off-airport companies have very few unreserved walk-up customers. In this one category prices between on- and off-airport companies are sometimes comparable. However, it is ludicrous and underhanded for the airports to use this one category to argue that off-airport companies are more expensive than on-airport companies. Such an assertion is, on its face, absurd.

In California, Illinois and New York, Hertz and Avis successfully lobbied heavily for so-called "pass through" legislation. Under these statutes, airport access fees must be charged as part of the base price of the rental, not as a separate line item. The effect of this legislation is to force off-airport companies to raise their base rates not only for customers who arrive via the airport, but also to local "walk-up" customers who never set foot in the airport. These laws also prevent national advertising of rates because of the variance in the amounts charged by airports.

While most airports claim the right to impose fees on off-airports because of the minimal nexus established through the operation of a courtesy van on the airport's public roadways, an increasing number of airports no longer require even this minimal level of contact. As I have already described, several airports, including Los Angeles, Ontario, Port of Portland, Tampa, Kennedy, LaGuardia and Newark, impose an access fee even if the customer does not use the courtesy van, so long as the customer rents the car within 18-48 hours after his arrival, depending on the airport. This means that the off-airport company is put in the delicate, and possibly illegal position, of having to interrogate every customer as to whether they came via the airport within the previous 18-48 hours.

Since off-airport companies predominantly service the leisure travel market, the fare increases resulting from gross receipts fees will fall most heavily on budget-conscious travellers such as families, senior citizens, and students.

VII. The Fair Airport Access Assurance Act

The Fair Airport Access Assurance Act would establish a simple standard, already found elsewhere in federal antitrust law, that I find difficult for anyone to assail; namely, that federally-assisted airports may not impose "an unreasonable and unjustly discriminatory tax, fee or condition" on off-airport companies "where the effect of such tax, fee or condition may be to substantially lessen competition or tend to create a monopoly

. . . ." We believe that no one can argue with the goal of this legislation.

This legislation amends the antitrust laws and is needed because airports enjoy a monopoly position in the communities where they are located and are currently immune from traditional remedies available to small businesses under our antitrust laws. In the absence of clear Congressional direction, such as that proposed in the Fair Airport Access Assurance Act, some airports will continue to use their monopoly position to maximize revenues without due regard for other important public policies such as promotion of small businesses and enhancement of consumer choices. Ordinarily, the threat that essential facilities will abuse their monopoly position is dealt with by requiring that fees charged to users be "just and reasonable."

Another reason why this legislation is necessary is that, unlike the airlines, off-airport businesses enjoy no legal protection from unreasonable airport policies. The antitrust-immune airport authorities are not politically accountable to the people who are affected by these fees. The only legal tool off-airport businesses have available to protect their interests, and those of the consumer, is to bring a lawsuit challenging the constitutionality of actions taken by airport authorities. However, our attempts to gain relief in the courts from unreasonable and discriminatory fees are simply not heard on the merits. In many cases, airports have been shielded in their anti-competitive conduct by the state action exemption. Of the numerous suits filed regarding unfair airport access fees, the one most often cited by airports in support of the fees is the appellate decision in Alamo v. Sarasota Manatee Airport Authority, 825 F.2d 367 (11th cir. 1987). In that case, the appellate court upheld a percentage fee against the allegations that it violated the equal protection guarantees of the United States Constitution. While the case is often referred to as if it has been finally decided, the case is still pending before the 11th Circuit Court of Appeals on the issue of whether the fee violates the Commerce Clause of the Constitution. Currently there are fifteen cases pending in State and Federal Courts on the issue of the legality of access fees. Most of these cases are in state courts and address the state laws regulating taxation. In two of those cases, the trial court rejected the taxes as illegally levied. Miljack, Inc. v. Tulsa, No. CJ-88-2629 (Dist. Ct. Tulsa County, October 12, 1988), Alamo Rent A Car v. Board of Supervisors No. 58-41-70 (Super. Ct., Orange County, California, March 29, 1989). In Alamo Rent A Car v. Board of Supervisors, the court rejected the argument that access fees imposed on rental companies can be justified because of the economic or business value of access to the airport rather than the actual costs imposed on the airport by the rental car companies. (The decision in this case has been stayed pending an appeal.)

However, other courts have reached the opposite verdict. Alamo Rent A Car v. Board of Referred Powers of the City of Los Angeles, et al., Case No. C747508; Thrifty Rent a Car System, Inc. v. City and County of Denver (filed July 26, 1989).

Additionally, the efforts of our competitors who are located on airport property to persuade airport authorities to restrict access to airline passengers or to raise our costs by charging unreasonable access fees cannot be currently challenged under the antitrust laws due to the Noerr-Pennington doctrine. While this defense was created to protect the First Amendment right to petition the government, it unfortunately permits entrenched businesses to promote anticompetitive regulatory decisions, which forward their own monopolistic interests.

The absence of a cause of action under the antitrust laws does not imply the absence of anticompetitive effects. Rather, as Federal Trade Commissioner Terry Calvani pointed out in a speech a few years ago, we are seeing an alarming increase in non-price predation strategies in which rivals can, with comparatively little risk of litigation, promote public sector decisions that raise competitors' costs and drive them out of business. We believe our current situation is an excellent example of Commissioner Calvani's concern.

In particular, Hertz has been actively writing and encouraging airports to impose these fees and, of course, Hertz is testifying here today. Additionally, as described earlier, Hertz has successfully lobbied the states of Illinois, California and New York on "pass through" legislation. Hertz has also threatened litigation against American Airlines unless its SABRE computer reservation system display is altered to make these additional fees a part of the base rate, so that Hertz' own base rate would appear more favorable when compared to that of the off-airport companies. Thankfully, American Airlines pointed out to Mr. Olson the illegality of his purpose, and refused to participate in it. The antitrust-immune airports do not worry about such trifling matters. Hertz knows that if off-airport companies have to raise their rates to offset the expense of an airport access fee, Hertz can then increase its own rates to its customers. In fact, Hertz may choose to increase its rate by a lesser amount in order to close the pricing differential between itself and the off-airport companies. Thus, Hertz can improve its profitability through higher pricing to its own customers while at the same time almost certainly increasing its market share.

Despite a few successes, the experience of Alamo and others who have sought relief in the courts from unreasonable and discriminatory fees shows that there is a critical need for the Congress to provide safeguards in this area. We have not hesitated to petition the courts, and we remain confident that, guided by the standard which would be established in the Fair Airport Access Assurance Act, the courts could serve to ensure equality and fairness in the application of airport access fees.

Mr. Chairman, the off-airport service providers are not asking for a free ride. We willingly pay reasonable and non-discriminatory fees at many of the airports we now serve. However, if the current trend continues unchecked we face the prospect of antitrust-immune airports using access fees as a way of stifling competition and running companies out of business.

There is ample precedent and justification for this type of action by the federal government:

1. The issue of access fees has produced litigation in the federal courts. Congress should clarify this matter before other litigation further confuses the matter. In addition, these cases have revolved around basic constitutional rights which are of legitimate concern to the Congress.

2. The federal government has acted to require a fair and equitable fee structure for the airlines. This basic principle of fair play should be applied to those businesses that assist airline passengers in completing their journeys. Section 511(a)(1) of the Airport and Airway Improvement Act requires that the Secretary of Transportation must receive assurances from the airport that the airport will be available for public use on "fair and reasonable terms and without unjust discrimination" before approving an airport development project. Pursuant to this federally mandated standard, the airports apparently have had no difficulty in developing a cost-based user fee that

takes into account use sensitive factors -- aircraft weight and frequency -- that reasonably relate to the costs incurred by the airport to build and maintain its facilities. The precise amount of the cost variable is revised periodically to recover an amount of revenue projected to cover costs. Because different airports experience different costs, landing fees vary among airports. However, an airport cannot unreasonably discriminate between fees charged to airlines operating the same aircraft at the same airport, nor is the fee collected based upon the value of each passenger's ticket.

In addition, no airline desiring to become a signatory to the airport use agreement can be excluded, and the determination of whether a fee or regulation is unjustly discriminatory is based not only on whether the carriers make a similar use of the airport but also on whether they utilize similar facilities.

3. If appropriations are enacted as currently proposed, the nation's airports will be federally subsidized by about 1.7 billion in fiscal 1990. This massive federal investment in the airports gives Congress more than adequate justification for imposing basic rules of fair play upon those airports that receive funding. In other non-aviation related areas there have been similar requirements. For example, since 1906 statutes dealing with the construction of bridges and tunnels with federal funds have required that any tolls be reasonable and just. The principle of justness and reasonableness has been

universally used in public utility-type rate making, and is well understood by the courts.

4. The courtesy vehicles operated by off-airport service providers primarily utilize the airport roads. While the rules of the Federal Aviation Administration do place limits on the funding of roadways by prohibiting the use of airport funds to resolve general highway problems, "airport entrance roads that are definitely needed and are intended only as a way in and out of the airport are eligible." In addition, "construction, alteration, and repair of airport roads and streets that are entirely within the airport boundaries are eligible under the program, if needed for operating and maintaining the airport." (14 C.F.R. Sec. 151.89(a), (b)). If federal funds can be used for these roads, then reasonable standards correspondingly should be imposed upon those who make use of them.

CONCLUSION

Mr. Chairman, the off-airport businesses, whether rental car companies, parking operations, hotels, or others, are willing to pay a fair and reasonable fee, without the airports, at Hertz' urging, fixing prices. That is all the Fair Airport Access Assurance Act requires. We ask this subcommittee to take a stand for fairness, for small businesses, and for the consumer. Please support this critical legislation.

[redacted]

May 15, 1990

The Honorable Howard M. Metzenbaum
Chairman, Subcommittee on Antitrust, Monopolies
And Business Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I would like to request that the following submission be added to the record of the hearing held by your subcommittee on April 24, 1990 on The Fair Airport Access Assurance Act (S. 1822). Some statements were made at the hearing which I believe were misleading and I would like to take this opportunity to correct them for the record.

Hertz and the airports testified that four Congressional committees have already reviewed the issue of airport access fees and unanimously determined that it was local in nature and not a matter for federal intervention. However, the actual record belies this representation. In particular, Hertz, citing House Report 100-123 in its written testimony, stated that "the House Committee on Public Works and Transportation declined to involve itself in an area that Members determined was strictly local." The following is the full text of the report of the House Committee on Public Works and Transportation on airport access fees:

> "E. Off-airport Companies
> The Committee is concerned that airport fees may not in some instances reflect the relative costs and and benefits of access to airport facilities when compared to the fees paid by airport tenants. The Committee has decided not to interfere with the prerogatives of the airports to set these fees at this time. However, the Committee will continue to closely monitor the situation." (1)

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(1) House Report 100-123, Part 2 on "Airport and Airway Improvement Amendments of 1987 (H.R. 2310), at 24 (June, 1987).

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Similarly, Hertz and the airports maintain that the Senate Appropriations Committee chose to take no action although they do admit that the Senate Appropriations Committee did direct the Department of Transportation (DOT) to undertake a review of gross receipts fees on off-airport car rental companies, with the specific responsibility of determining whether such fees are anticompetitive. (2) In fact, the legislation before the Antitrust, Monopolies, and Business Rights Subcommittee, The Fair Airports Access Assurance Act (S. 1822), is a direct result of the finding in the DOT Report of significant anticompetitive effects arising from the imposition of gross receipts fees. Specifically, the DOT study concluded:

> "Whatever the amount of off-airport fees, they will have a negative effect on off-airport companies, since the fees reduce or eliminate any cost advantage the off-airport companies may currently enjoy.
>
> "To the extent off-airport fees result in higher prices for car rental services, such fees will reduce the demand for rental cars. Moreover, when faced with higher prices, the discretionary traveler will either not rent a car, rent a cheaper class of car, or rent a car for shorter period of time. Thus, gross receipts fees are more likely to affect the typical discretionary traveler than they are the typical business traveler." (3)

The Federal Trade Commission, commenting on the DOT Study, has stated that gross receipts fees on off-airport car rental companies"...may be associated with a decrease in profits of off-airport companies, and a decrease in the number of off-airport car rental companies at a particular airport." (4)

(2) *See,* Conference Report for the FY 1989 Department of Transportation Appropriations Act.

(3) Department of Transportation, "A Review of the Imposition of Gross Receipts Fees on Off-Airport Car Rental Companies," April 1989, p. 40.

(4) *Id.*, Appendix A (Comments of the Bureau of Economics, Federal Trade Commission).

Another misconception put forward by the airports at the hearing is that gross receipts fees are imposed after due consideration and consultation with both on- and off-airport companies. The Director for Aviation for the Sky Harbor International Airport in Phoenix, Arizona, Nielson Bertholf, described how a gross receipts fee was not imposed at his airport until a task force consisting of both on- and off-airport companies had reviewed the issue. This is true, but he did not reveal that this was an exception to the conduct of most airport authorities, nor that at most airports the fees are either "sprung" on the off-airport companies without notice, as in the case of Harold Dunlap, the Dollar licensee from Montrose, Colorado, or with minimal advance notice and opportunity for public comment. Indeed, accompanying Mr. Bertholf at the witness table was Arthur P. Berg, Chief, Opinions and Appeals Division, Port Authority of New York and New Jersey, who failed to mention that a gross receipts fee was imposed at the three airports under his jurisdiction -- Kennedy, La Guardia and Newark -- without a public hearing or any other opportunity for public comment!

Mr. Chairman, I hope that these comments are useful in establishing an accurate and fair record of the issues surrounding the imposition of airport access fees. I would be happy to provide any further materials which you might require in your deliberations over S. 1822. Again, thank you for the opportunity to contribute to the public record on this issue.

Sincerely,

Philip S. Shailer
Senior Vice President

PSS:awc

[redacted]

May 15, 1990

Honorable Howard M. Metzenbaum
Chairman, Subcommittee on Antitrust, Monopolies
And Business Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed please find my response for the record to the additional question posed by Senator Thurmond after the April 24th hearing on airport access fees. I would be happy to answer any further questions which either you or Senator Thurmond might have regarding this issue.

Sincerely yours,

Philip S. Shailer
Senior Vice President

PSS:awc

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[redacted]

Honorable Strom Thurmond
United States Senate
Washington, DC 20510

May 14, 1990

RE: The Fair Airport Access Assurance Act, S. 1822

Dear Senator Thurmond:

As you requested, I am responding to your question from the hearing on April 24, 1990 on S. 1822. You have asked how I would define the terms "unreasonable and unjustly discriminatory" so that airport authorities would have some assurance that the fees they impose would be legal and would not be subject to extensive antitrust litigation.

The terms "unreasonable and unjustly discriminatory" have already been defined by the courts in the context of Section 511 of the Airport and Airway Improvement Act of 1982. That statute requires the Secretary of Transportation to ensure that airport projects for which federal grant funds are expended "will be available for public use on fair and reasonable terms and without unjust discrimination." 49 U.S.C. 2210(a)(1). While the statute does not define this terminology, the First Circuit, examining the language of this provision and other related provisions, has held "as 'reasonable' any fee or charge by the airport proprietor which fairly and rationally reflects the cost to users that are comparably situated. To make such an equation it is essential that a methodology be established which is founded upon a principled, non-arbitrary basis." New England Legal Foundation v. Massachusetts Port Authority, 883 F.2d 157, 169 (1st Cir. 1989). Alamo endorses this definition of "reasonable" and believes that a cost-based, non-arbitrary methodology would not only ensure "reasonable" fees, but also fees that are not "unjustly discriminatory." Such a methodology would not be subject to extensive antitrust litigation. Indeed, the airports have already had eight years of experience developing fair, reasonable and not unjustly discriminatory fees for aeronautical users under Section 511, and have successfully done so without excessive litigation. There is no reason to believe that the standards set forth in S. 1822 would be any more subject to litigation than the standard set forth in Section 511.

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In his testimony at the hearing, Dr. Mark Cooper of the Consumer Federation of America, proposed two frequently used cost-based methodologies that could be adopted by the airports which would be reasonable and not unjustly discriminatory. Either methodology is acceptable to Alamo.

The first methodology is called the "equal burden rule." Under the equal burden rule, the direct cost to the airport of each airport user is first calculated. Then, for airport costs not directly attributable to any one user an equal percentage mark-up is imposed on all users. Thus, all airport users would pay their own cost to the airport plus a percentage mark-up of that cost to cover common airport expenses which are not attributable to any particular user. All users would have the same percentage mark-up to cover these common expenses. According to a Consumer Federation of America study released in April, 1990, off-airport rental car companies, at airports imposing gross receipts fees, are currently paying fees of as much as 2,000% of their direct costs to the airport! Dr. Cooper referred to this statistic in his testimony on April 24, 1990. It is inconceivable that other users of the airport are subsidizing airport costs so heavily.

The second methodology is called the "equal benefits rule." Under the equal benefits rule, the cost to build or supply the services for each user is first calculated (this is known as the "stand alone" cost). Then the stand alone cost for all airport users is added up. Because there is much more than one user for each service, such as airport roadways, and there are economies of scale and scope, the total actual cost will be less than the sum of the separate stand alone costs. Therefore, each user should pay less than their stand alone cost. Under this methodology, each user's percentage of the separate stand alone costs is used to determine their percentage of the actual final cost.

Alamo is concerned about the anti-competitive intent and effect of gross receipts fees. Gross receipts fees bear no relationship to the costs imposed in the airport by off-airport companies. On the other hand, a cost-based methodology would ensure that any fees assessed on airport users would be non-discriminatory and fairly proportionate to the costs they impose on the airport. The methodologies described above are already in use, or have been proposed, in the pricing of multi-purpose water projects, telecommunications, railroads and natural gas. (1) Additionally, under the auspices of federal law, the courts have already administered without undue litigation the development of cost-based methodologies for the air-side of the airport. See, New England Legal Foundation v. Massachusetts Port Authority, 883 F.2d 157 (1st Cir. 1989).

In sum, Alamo believes that a "reasonable" airport access fee should be defined as one that "fairly and rationally reflects the cost" to the airports of use of the airport's public roadways by the off-airports companies. As long as such fees are determined using a cost-based analysis which takes into account all users of the airport, such a fee should not be viewed as "unjustly discriminatory." In fact, some airports, such as Orlando and Fort Lauderdale, now impose fair and reasonable per trip or per contract fees on the ground-side which are intended to provide for recovery of costs to the airport. These cost-based fees have been paid without objection by the off-airport companies and have not been the subject of any litigation.

Senator, I hope that this fully answers your question. I would be happy to answer any further questions you may have.

Sincerely yours,

Philip S. Shailer

Philip S. Shailer
Senior Vice President,
Corporate Affairs Division

PSS/cmg
cc: Honorable Howard Metzenbaum

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1. See P. Fanara and C.M. Grimm, "Stand-Alone Cost: Use and Abuse in Determining Maximum U.S. Railroad Rates," Transportation Research, 19, 1985; W.H. Melody, R. Warnek, W. Mihuc and R. Gabel, Allocation of Telephone Exchange Plant Investment, Kansas Corporation Commission, 1983; M.G. Glaeser, "Those Joint TVA Costs." Public Utilities Fortnightly, 6, 1939; S. Moriarity, "Another Approach to Allocating Joint Costs," Accounting Review, 50, 1977; Hamlen, et al., "The Use of Core Theory in Evaluating Joint Cost Allocation Schemes," Accounting Review, 52, 1977; Consumer Federation of America, "A Residential Consumer View of Bypass of Natural Gas Local Distribution Companies," February, 1988.

Senator **Metzenbaum.** Thank you, Mr. Shailer.

Mr. Chance, please proceed.

STATEMENT OF EDWARD CHANCE, THRIFTY RENT-A-CAR LICENSEE, BATON ROUGE, LA

Mr. **Chance.** Yes, sir. Thank you, Mr. Chairman, for the opportunity of being here. My name is Edward Chance. I live in Baton Rouge, LA. I have a rental car franchise in Baton Rouge and a rental car franchise in Shreveport, LA. We are the smallest operator in both of these cities. We do pay an airport access tax in both locations.

I went into business about 6 years ago—that dream that every man, I think, has of owning your own business. We could not go on airport because the on-airports already had long-term commitments and contracts, and in both locations they only allow four operators on airport.

The fees and guarantees that you had to guarantee were much greater than our business when we started, and even today could not generate revenue to pay those fees. We were able to get some land and lease some property from the previous owner of the franchise in Baton Rouge and operate our business off airport.

We did not get any benefits other than that our customers had made a conscious decision to rent a car at the most economical rate that they felt they could do and rent that car from us.

We have heard testimony that says we conduct business at the airport. It is my understanding that the airport is nothing more than a conduit which that customer comes through, and my customer had made a decision to come to Baton Rouge and he had made a decision to rent a car from us.

We had no rights or privileges on the airport before. We now pay a tax and a fee and we have no rights and privileges on that same airport.

Senator **Metzenbaum.** How much of a tax and a fee do you pay?

Mr. **Chance.** We pay 7 percent of gross receipts.

Senator **Metzenbaum.** And the on-airport operators pay——

Mr. **Chance.** They pay a minimum of 10 percent or the guarantee, whichever is greater, of their revenues.

And so we pay this fee to go pick up our customer. The airports had us sign an agreement, and I would like to just read a section of the first of this agreement. We found that we had a new partner in our business that we didn't know we had.

They say we will issue a permit to conduct a rental car business located off the premises of, but operating on or using the facilities. I don't have the privilege of operating on or really using the facilities at the airport. They were saying we are going to give you a permit to do business. I had already paid my taxes to the city and the State and had those.

They dictated the amount of car insurance that I was now to carry on my fleet of vehicles. The State of Louisiana says I will do this. I found that I had a new partner in my business.

We needed some way to make our voice heard. We didn't have that opportunity. As a small businessman, I don't have the money and cannot afford the thousands of dollars it would take to have litigation against a governmental organization that is free and protected from any litigation.

And so we simply are coming asking you, Mr. Chairman, to hear our cry out there as small businessmen who had a dream to have a business and seeing that dream eroded by taxes and other penalties imposed upon us, and we have no voice to say "help."

[The prepared statement of Mr. Chance and response to questions follow:]

STATEMENT

OF

EDWARD CHANCE
THRIFTY RENT-A-CAR LICENSEE

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS
UNITED STATES SENATE

ON

S. 1822
THE FAIR AIRPORT ACCESS
ASSURANCE ACT

APRIL 24, 1990

Thank you for inviting me here today. My name is Edward Chance. I operate two rental car businesses in Baton Rouge and Shreveport, Louisiana, under license from the Thrifty Rent-A-Car System. In an informal way, I am here representing both the consumer who rents from me and the many hundreds of other small-business people who are watching their businesses being threatened by the possibility, and in many cases the reality, of unfair and discriminatory airport taxes. Many of us have spent many years and a lot of hard work building up our businesses, only to find that, almost overnight, the rules have changed, leaving us struggling to survive. Indeed, some of us have not survived.

The problem, as you know, is that many airports around the country have imposed a fee or tax on the gross receipts of off-airport rental car companies for the privilege of serving customers who use the airport. The typical off-airport gross receipts fee ranges from seven or eight percent to the ten percent figure usually negotiated by the companies operating on-airport. But, whatever the percentage, the goal of the airport (and the on-airport companies) is overwhelmingly clear -- to force off-airport companies to pay the same, or nearly the same, fees paid by the on-airport companies and eventually to eliminate the off-airport car rental market.

You probably have already heard, or you will hear, a lot about the economic effect of these fees, about how they distort competition and how, ultimately, they make fundamental changes in the travel marketplace. You will probably hear how the imposition of these fees will raise prices for rental car customers, while, at the same time, diminishing consumer choices. You will hear complicated arguments about why these fees are needed to maintain the aviation industry in this country, and why airports should be financed on the backs of the businesses surrounding the airport.

However, I want to tell you how these fees affect me and others who are trying to operate small businesses -- small businesses that provide the value in rental cars that a segment of the traveling public wants and has not had before. I want to make sure that, in the debate over the economics of airport access fees, the viewpoint of small business people like myself is not overlooked.

My Business.

First, let me describe my rental car business, which I think is fairly typical of off-airport operations generally. At both Baton Rouge and Shreveport, I am located a short drive from the airport. When customers have telephoned in advance to reserve a rental car, I send a van to the airport to meet their arriving flight and bring them back to the office. Because my customers have telephoned either my office or the Thrifty reservation center, they are looking for the Thrifty vehicle when they arrive at the airport. Virtually none of my customers walk up to the van without having made prior arrangements, although occasionally someone may telephone my office after he or she has arrived at the airport.

In other words, I get very little business directly from the Baton Rouge and Shreveport airports. In fact, I am forbidden at each airport from making any solicitations on the airport grounds. My driver cannot leave his vehicle and enter the terminal and cannot approach potential customers. I have no counter at the airports. I am forbidden at each airport to place signs, to advertise, or to have direct telephone lines. My van stops at a place different from that used by the vans of the on-airport companies.

Four large companies operate on-airport at both Baton Rouge and Shreveport. These on-airport companies have worked out their own special arrangements with the airports. The on-airport companies have car space, counters, and advertising. At Baton Rouge, I am the only car rental company that is not on the airport. My fleets of about 85 rental cars at Baton Rouge and 60 cars at Shreveport are the smallest rental car fleets at each location. However, in spite of my disadvantaged position, I have built my business to the point that I can be proud of it.

I should mention my typical customer, for just as my off-airport business differs from the on-airport business, my customer differs from the on-airport customer. My customers, who, as I have said, usually reserve their cars before they arrive at the airport, are more likely to be tourists, people on personal business, or small businessmen like myself. These people are known in the travel industry as discretionary travelers -- people who will forgo the convenience of having a car waiting for them on-airport to walk or ride off-airport to save money. They are seeking the value of traveling off-airport to rent their cars. Business people, who are in a hurry, who write off their car rental expenses, or who are traveling on expense accounts, can afford the on-airport prices and the convenience of renting their cars on-airport.

I have built up my business off-airport by keeping my overhead down so that I could keep my prices down. But only value-minded travelers are going to come to me because of the inconvenience of getting on a van, often with a lot of luggage, to travel off the airport to get to a rental car rather than picking up a car right outside the terminal.

Gross Receipts Access Fees.

At both Baton Rouge and Shreveport, I am forced to pay a tax of seven percent of my gross receipts. The large on-airport companies have negotiated with the airports for a ten percent fee. Although I pay a tax that is three percentage points less than they pay, I don't expect, nor do I receive, the benefits that they obtain from operating on the airport. And, as I have just described, the advantages of operating on the airport are significant.

The access fees or taxes are enacted, not by local governments, but by local airport authorities. Although there may be a hearing, sometimes the fee is simply declared by the airport authority. If there is a hearing, there is usually very little notice given. If an off-airport operator receives notice of the hearing in time to present his views, he quickly learns that the airport authority has in most cases already decided the issue in advance.

Note that a "fee" computed as a percentage of gross receipts is nothing more than a tax. The people on these airport boards or authorities are often not elected, no one votes for them and they are not accountable. Yet, here they are taxing the proceeds of businesses beyond their airport boundaries and consumers beyond their jurisdictions.

Some airports are not limiting the fee to a percentage of revenue from people arriving at the airport. For example, Madison Airport in Wisconsin proposed a fee that permits the off-airport operator to elect between paying a tax equal to ten percent of his airport related business, or eight percent of his total business, whether or not that business is related to the airport.

Typically, an on-airport company contracts with the airport by bidding a concession fee of ten percent of its gross receipts. Accordingly, usually ten percent is the maximum fee proposed for off-airport businesses. However, airports have been known to propose higher fees for off-airport operators. In Montrose, Colorado, a Dollar Rent-A-Car licensee was assessed an eight percent gross receipts fee (the same fee negotiated by the on-airport companies in Montrose). When the off-airport operator complained about paying eight percent, the airport raised the fee to fifteen percent.

The airports enforce the tax by requiring off-airport businesses to sign an agreement or to obtain a permit to drive their courtesy vans on the airport premises. Without a permit, the vans are not allowed to use airport roads, and many airports are quick to threaten use of civil and criminal trespass statutes.

The airports know that most off-airport businesses simply don't have the resources to get involved in court battles. The business that is going to fail if it loses seven or ten percent of its revenue is obviously not a business that can afford to sue the airport. We always try to negotiate with the airport, and sometimes we are able to reduce the percentage of gross receipts being taxed. But an airport is a monopoly, it can do as it pleases. And usually an airport will not listen to small business people like me.

These forced agreements come with various terms and conditions. Most airports require the off-airport operator to prepare and submit certified accounts on a monthly basis. Often the airport will insist on the authority to inspect the books and records of the off-airport company and will require a statement of a certified public accountant at year end.

For example, the proposed license and use agreement for off-airport rental car operators at the Aspen, Colorado, airport requires the off-airport operator to agree to pay ten percent of fees billed, whether he is able to collect or not. The agreement further states that the ten percent fee is in addition to "such amounts as are determined by the Airport as being equal to the value of the impact and use of the Airport facilities." The "agreement" continues its overreaching effect by giving the airport the right to set the hours of operation of the off-airport business, and even to direct the off-airport business if it interferes with the operations of the named on-airport companies. It further requires its non-consensual business partner to provide certain types of vehicles and equipment "consistent with first-class national rental car operations" and to hire "environmentally-sensitive" employees. Antitrust lawyers tell me that such conditions are termed "barriers to market entry."

At Baton Rouge, in addition to the percentage fee, I also pay an annual flat fee for operating my van on the airport premises to collect customers. To the extent that a flat fee is related to my use of the airport's facilities, it is fair. I have no objection to paying this type of fee. But, at each airport I pay a fee of seven percent of my gross revenues, a fee that bears no relationship to how much or how little I use the airport.

Effect of the Fees.

A sudden additional business expense of seven per cent of gross receipts is devastating to the balance sheet of a small business, and most off-airport businesses survive by passing that increase on to the customer. However, once the off-airport operator has increased his or her prices, the large on-airport companies have achieved their objective -- they have removed the price differential between on- and off-airport rental cars. If the price of renting on- or off-airport is the same, the customer will forego the inconvenience of renting cars from off-airport companies.

If the off-airport operator limits his price increase to airport generated business, he begins to treat his customers unequally. Customers are understandably annoyed when they find they are paying more than the next person in line just because they arrived by air. And it's not just a flat fee the customer pays. He will pay a percentage over and above the cost of hiring the car for however long he uses it. The longer he rents the car, and the larger car he rents, the more he pays. Yet he will only use the airport twice, just as the customer who pays a much smaller tax by renting a car for only a day.

Of course, the overhead of the off-airport operator is already higher than that of the large companies operating on-airport. On-airport businesses quite often rent land on-airport at below market prices, while the off-airport company must rent property outside the airport perimeter at market prices. Plus, I also have to run a van that I buy and insure, and pay for additional advertising so people know my location.

So far my business has survived. I don't know what the future holds, but I hope that my fate is better than some other off-airport businesses around the country who have already been forced out of business. This is what the on-airport companies want -- it reduces their competition and permits them to raise their prices. It is also what the airports want. They claim the need to "protect" their income by making certain that as many people as possible use on-airport companies.

One of the reasons always put forward by the airports for the introduction of the gross receipts taxes is that the big on-airport companies will move off-airport and the airports will lose their concession fees. However, these threats cannot be taken seriously. The on-airport companies will not move because the material and monetary benefits they receive by being inside the terminal are too great. Indeed, after San Francisco enacted a seven percent tax on top of a $1 per-trip fee, the on-airport companies made a plea for economic relief on the grounds that the airport had an influx of new revenue.

However, moving on airport is simply not that easy, nor is it a desired direction of the off-airport operator. Often space is limited, and most airports require unbelievably high guaranteed minimum bids which in turn requires a larger fleet, additional capital and personnel. Even if an airport has space, and even if we believe that we can make the high minimum bids, we are often told that new entrants must have in-terminal experience or that long-term contractual agreements between the airport and the on-airport concessionaires do not permit the admission of new entrants between bidding periods. In several cases we have been forced to pay the same amount as the on-airport concessionaires, yet have been prevented by those concessionaires from moving on-airport.

Conclusion

I hope that I have given you some idea of the problems faced by businesses like mine. I ask you to support S. 1822, the Fair Airport Access Assurance Act. If Congress does not act, the airports will destroy the competitiveness offered by the off-airport companies within the car rental industry. Many such businesses will fail. Many consumers will be unable to afford to rent cars. The prices of the on-airport companies will go up, and there will be no off-airport alternative in the marketplace to keep prices competitive. Small business people like myself need this legislation to survive.

Licensee
Veterans Memorial Blvd
& Varsity St
Baton Rouge, LA 70807
504 356 2576

Out of Town Reservations
1-800-FOR-CARS

Thrifty Car Rental

May 13, 1990

Senator Howard M. Metzenbaum
Chairman
Antitrust, Monopolies and Business
  Rights Subcommittee
Room 224, Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Metzenbaum:

The attached sheet contains my answers to the two questions you had for me.

I appreciated the opportunity on April 24 to testify regarding the dilemma faced by off-airport car rental companies.

I would be glad to answer any additional questions that may develop.

Sincerely,

R. Edward Chance

R. Edward Chance, Licensee
Thrifty Car Rental
Baton Rouge and Shreveport

Question 1. Mr. Chance, isn't it true that at many airports there is really little difference between the off-airport companies and the on-airport companies; that is, in many locations both types of companies must use a van to get their customers to and from the cars? In that situation, what advantages does the on-airport company have over the off-airport company?

Answer. At both my locations, Baton Rouge and Shreveport, the on-airport company customer has a rental car waiting for him at the terminal. None of the in-terminal companies at these airports uses a van to bus their customers to the rental cars as I do.

However, there are a number of advantages to being in-terminal, even at those airports that require in-terminal companies to bus their customers short distances. The advantages of being on-airport include the right to:

- solicit and advertise on airport property
- install courtesy phones
- open a prominently positioned sales counter (often at below market rates)
- receive and serve customers in an airport-provided, taxpayer-subsidized building
- access walk-up customers without reservations
- ready accessibility to its primary customers (business travelers)
- on-airport parking and storage
- prime pick-up and discharge areas that are clearly marked, and
- long term concession agreements that bind the airport not to admit additional competitors.

Question 2. If you had your choice, would you prefer to be on-airport or off-airport?

As a small businessman, I have a significant investment in my off-airport operations -- an investment that I would not want to abandon by moving on-airport. However, the question is moot because the Baton Rouge and Shreveport airports each have only four on-airport openings, and my business could not come close to outbidding the major companies for these four slots.

Senator METZENBAUM. Thank you very much, Mr. Chance.

Mr. Tschirhart, Hertz is opposed to S. 1822. Yet, other on-airport car rental companies support S. 1822. I received a letter from Dollar Rent-A-Car, which is on-airport at 120 major airports, stating its support for this legislation. I have also received letters of support from Avis licensees and, yes, even a Hertz licensee. I have over 1,000 postcards from consumers who rented cars at off-airport companies.

The question I have is why is Hertz siding with the airports to allow discriminatory and unreasonable fees. Here is a man paying 15 percent and you are paying 8; here is a man paying 7 percent, you are paying 10. He can't get even get into the terminal.

Why would a large corporation—I think you are now owned by Penske, is that correct?

Mr. TSCHIRHART. No, sir; no, sir.

Senator METZENBAUM. Who owns you this week? [Laughter.]

Mr. TSCHIRHART. Mr. Chairman, we are now owned in part by the Ford Motor Co., and in part by Volvo and in part by private interests.

Senator METZENBAUM. Who is the third one?

Mr. TSCHIRHART. Private interests.

Senator METZENBAUM. Which private interests?

Mr. TSCHIRHART. Some management personnel, and also a foreign—a bank.

Senator METZENBAUM. But Ford is the major owner now?

Mr. TSCHIRHART. Ford is the major stockholder, yes, sir.

Senator METZENBAUM. OK. Now, those are companies that I usually hear around these halls talking about free enterprise, and don't let the Government interfere in our business. But, apparently, it is OK to let the Government interfere and restrain competition if it is at the local level, but don't get the Federal people involved.

I have some difficulty. I am familiar somewhat with the history of Hertz. I remember when Hertz bought Avis and then had to back out up. Yes, you bought Avis, you bought Avis. I can tell you that for sure because I was the lawyer and I was the Avis franchisee raising cane about it with the Antitrust Division, and you finally backed up. I remember these things.

Now, I question why would a goliath of a corporation, now with even the parentage of Ford Motor Co. and Volvo—why would you be so opposed to letting these other people compete? If you are opposed to their picking up customers at the airport, would you be willing to say, well, let them all come on the airport and let them just pay their 10 percent and give them a booth? Would that be agreeable to you?

Mr. TSCHIRHART. There are a lot of questions there, Senator, and I will answer them as best I can. With regard to whether or not we would like them to come on airport, of course that is not the issue. The issue here is not one of access to the airport, but rather one of who pays for that access and whether there is a fairness of paying for that access.

I know this: If I were operating a flower shop in the airport and somebody came along with a push cart out in front of the airport and started selling flowers and I was paying a 10-percent concession fee to the airport for the privilege of selling those flowers in the airport and the person pushing the push cart right out front was selling without having to pay anything, I would be pretty upset at that, too.

And I think the position that Hertz has taken is eminently reasonable in the sense that we have for a very long time—we and other on-airport operators for a very long time paid an average of 10 percent for the support of the airports.

When we say support of the airports, we mean construction costs, maintenance costs, operating costs, the costs of the entire airport. And we have paid those fees because the airport provided us with access to deplaning passengers. That access to deplaning passengers is now available in almost the same fashion to the off-airport industry, such that a company like Alamo Rent-A-Car can open a $23 million facility in the Los Angeles Airport just off-airport.

They are larger than we are in California, they are larger than we are in Florida. This is not a small company seeking relief. This is a very large company that has grown, along with many other companies, because they have had a 10-percent cost differential.

Now, who pays for that differential? Is it truly—I mean, who is it that is paying for that 10-percent differential? It is the people that use the airport. It is the passengers who have to make up the difference, it is the customers of the on-airport companies that have to make up the difference. If they don't pay their fair share, Senator, then somebody else has to. So it is a question of fair share.

Senator **Metzenbaum**. Why don't we do it this way? Why don't the airports—they need the money, and you would recognize that. Why don't they bid for the right to be on the airport based upon a percentage of gross receipts? In other words, you go in there and you bid 10 percent. This man over here, Mr. Dunlap, comes and he bids 12 percent. Mr. Shailer comes in and bids 14 percent.

That is the restraint, it seems to me. If you really want to get the most money for the airport, you don't get more money for the airport by having the flat fee. You are the ones who over the years have had the 10-percent figure built into every contract, and you have never said, well, in order to help the airport, let everybody come in and bid a percentage and decide who is going to be on the airport based on the percentage, not on the basis of a minimum guarantee. Based upon the minimum guarantee, the biggest company is going to get the contract. Why don't you do that?

Mr. **Tschirhart**. Mr. Chairman, we have never been in a position to—the question is unanswerable because that is not something that should be addressed to us as to how the airports will bid those particular——

Senator **Metzenbaum**. You say you haven't been in a position to affect this decision? Come on, Mr. Tschirbart. Don't tell me you have not been in a position to affect it. You are at every AOC meeting, you are at every AAAE meeting, so don't say you are not. You are lobbyists. You are strong, you are very effective, you are potent. You have been for many years, so don't say you couldn't affect it.

Mr. **Tschirhart**. We attempt to negotiate with the airports, and I think we have been reasonably successful over the years in negotiating with the airports. But the manner in which the airports offer their facilities for bid is not something that we can affect.

They come out with an RFP, just like any governmental organization comes out with a request for a proposal. That is the way the bids are made.

Senator METZENBAUM. Wouldn't you think it would be a pretty good idea from a free enterprise basis to be able to bid percentage rather than to bid minimum guarantees?

Mr. TSCHIRHART. We will competitively bid under any circumstances, Mr. Chairman.

Senator METZENBAUM. I didn't ask whether you would bid. I asked whether you think it would be a pretty good idea.

Mr. TSCHIRHART. Well, if it is fair competition, we would favor it, obviously. You know, that is not the issue before this panel.

Senator METZENBAUM. It may not be, but that is the question that the chairman is asking. [Laughter.]

Mr. TSCHIRHART. Yes, sir; yes, sir. And as I say, we would favor any fairly competitive bid process.

Senator METZENBAUM. I would ask you, Mr. Lobeck, how you would feel if you could bid percentage and not have to bid guarantee.

Mr. LOBECK. I will answer it this way. Several months ago in Denver, CO, when they were talking about a fee we proposed a suggestion. We said, hey, we will pay any fee that you want off airport. We will pay 2, 3, 5, 10, as long as you establish a differential that is fair, like 8 percent. We will pay 10 off if they will charge 18 in terminal. Now, they opposed that, they opposed that.

Senator METZENBAUM. Mr. Shailer, how would you feel about bidding percentages, or how would you feel about—what is the Alamo position vis-a-vis the matter of paying some percentage, or do you stand for paying no percentage?

Mr. SHAILER. No, sir. As a voluntary bidder, a voluntary concessionaire, I think a percentage of some sort is certainly fair. The airports need and are entitled to that revenue, but I believe what is unfair is the closed shop syndrome that has evolved over the years.

There are two extreme examples that might constitute viable alternatives. One would be the Denver situation where, as you know, Mr. Chairman, recently they opened up the airport and now have 15—count them, 15—on-airport concessionaires, and we understand they are going to make four more spaces available to, I guess, the four companies that remain off airport.

The other extreme would be the Memphis situation where the airport chose to throw everybody off airport. They simply said to all rent-a-car companies, you will all operate henceforth from off-airport facilities, run your buses and vans into the airport to pick up your customers, and pay us a percentage fee.

That, at least, Mr. Chairman, is a level playing field, the type of thing that I always hear Mr. Tschirhart talking about that I was surprised I didn't hear him using today, that level playing field that they want. That would, I think, be a fair way to open up the airports so that big and small alike could have an opportunity to be, quote, "on-airport concessionaires," or to hold themselves out in that fashion.

Senator **Metzenbaum**. Do I understand—it just takes a yes or no—Alamo is willing to pay some percentage, but objects to either paying an equal percentage or one that is only a couple of points below the amount that the others are paying?

Mr. **Shailer**. Oh, I am sorry, sir. I was saying as a concessionaire, as a voluntary bidding concessionaire. If you mean as an off-airport company, no, sir. We oppose wholly the percentage not because of an amount, whether you said it is two points or four points or five points below, but because it is a wholly arbitrary means of imposing or sharing the imposition of the costs of operating that airport. We just think that is grossly unfair and unjustly discriminatory.

Senator **Metzenbaum**. Dollar, as I understand it, supports this legislation and is willing to pay something. Thrifty is willing to pay something. Alamo thinks you shouldn't pay anything.

Mr. **Shailer**. Oh, no, sir; no, sir, not a percentage. We have always advocated, Mr. Chairman, the payment of a fair share. We believe there are any number of ways of doing it, a flat per-contract charge, for example, which is imposed in several airports now—Minneapolis-St. Paul, Orlando, Fort Lauderdale, Boise.

Or another, and really the most equitable means as to the off-airport companies, is a per-trip charge because it stands to reason that if I run my buses through your airport 100 times per day and Mr. Dunlap runs his through 50 times per day, then I am consuming that land-side operation twice as much as he is. I am putting twice as much wear and tear on the roads, using twice as much of the police and the lights, and what not, and I should pay twice as much as he does. We have absolutely no problem with that, have advocated it, and remain willing to pay on any such basis as that.

Senator **Metzenbaum**. Mr. Dunlap, you wanted to comment.

Mr. **Dunlap**. We have a situation in Montrose, CO, that takes place in the fall of the year, and we have approximately 150,000 come into Montrose to go hunting. These hunters go into these camps, and these camps furnish Cherokees and Jeeps and various vehicles for these hunters. In other words, this is part of the hunting fee.

They come in and they pick up these people, and they pick them up at the airports and they sometimes—many of them have a lot bigger fleet than I have that they send in, and they are Cherokees. I have a Cherokee, also. When I lease out my Cherokee, I am expected to pay 15 percent of my gross.

The normal hunting fee in Colorado is $3,000 per deer, and I just got through saying there are 150,000 deer permits sold. I asked the airport authority about this. How come you don't charge the hunters and all that? Oh, no, he says, we are not going to touch that; that is like touching motherhood. We are not going to bother them.

This is the actual case. In other words, they came along and said, no, we are not going to bother them; that is our bread and butter. Why would you want to go after them? They say you are easy to go after and you keep good books; those hunters don't even keep books. [Laughter.]

Senator **Metzenbaum**. Mr. Dunlap, I must confess that your testimony today just blows my mind to believe that somebody off airport is paying almost twice as much as somebody on airport, and there is a public street in front of the airport and you are paying for access to that.

Your testimony amazes me, Mr. Chance, in that they give you a contract as to what you can and cannot do in your business off the airport. I must confess it seems you get somewhat of a feeling that airport managers and airport operators are interfering with competition and that is a change for me because I knew many of them personally and I found them to be just average Joes, nice guys trying to do their business.

But some of the things you are telling me are just really hard for me to comprehend just because it almost has an anticompetitive aspect to it, telling you how to run your business and telling you what you can and can't do, telling you that you have to pay double under these circumstances.

I don't think I have any more questions. If I do, I may submit them to you for the record. The chair indicated in opening this hearing that I do think that there is an element of unfairness in what is taking place at the present time. I don't know exactly what action our committee will take. I will explore the subject.

I will say that for a hearing of this kind, the Chair was somewhat taken aback as to how many members showed up to participate in this hearing. That is the exception, not the rule, for a hearing of this kind. It indicates a great deal of interest. It obviously indicates a great deal of lobbying effort on both sides of this issue.

I am concerned really not about Thrifty or not about Alamo or Hertz or Avis or anybody else, or Budget. I am really concerned about the American consumer and whether or not the American consumer is becoming the fall guy at the bottom line of all of this, and that, to me, seems to be the real concern that we, in Congress, should have.

Having made that statement, this hearing stands adjourned. Thank you very much.

[Whereupon, at 11:38 a.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF WILLARD FRIEDMAN
SUBMITTED TO
SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS
UNITED STATES SENATE
APRIL 24, 1990

My name is Willard Friedman and I am a member of Americans Against Unfair Airport Fees. I reside in Omaha, Nebraska, where we are ably represented in the Senate by Senators Bob Kerrey and Jim Exon.

I own and operate an off-airport parking lot near Omaha's Eppley Airport. Just this month on April 11, the Omaha Airport Authority presented to me, and the 3 other off-airport parking lots, a license (attached) they expect to implement immediately which is highly unreasonable, unfair, and discriminatory in its fees.

It calls for us to pay the airport authorities of Omaha 10% of all gross receipts of our parking revenue, 10% can you imagine that! My business is new - just 18 months old and just now our cash flow is barely breaking even. Parking Industry consultants tell me it takes 3 years to bring a parking lot to normal revenue flow.

10% of gross revenue means that they want me to pay them about $30,000 in the next 12 months. Just for the privilege of driving our parking customers up near the airport terminal!

We won't get any new service for that money or any of the advantages granted to an on-airport parking facility. Those on-airport lots operated by the airport itself are better and more convenient but the truth is the airport does not want us to compete with them at all. They are unhappy we even exist.

When the airport first told us of this outrageous charge they intend to make, we asked them if they were going to raise their parking price as much as we will have to, to meet the 10% fee. The General Manager of the airport emphatically answered, "no - the airport will keep its price where it is now so as to recover some of the lost business they have experienced."

Gentlemen and Ladies, this is unfair competition and discriminatory. This is unreasonable and it is certainly un-American. The airport authority is an appointed body with the ability to enact onerous charges and we have no electorate to turn to for relief.

Certainly this set of affairs has borne the same name for 230 years. Taxation without Representation.

The airport authority claims this a license fee and that it is not a tax. But you know if it walks like a duck and quacks like a duck, it must be a duck.

We want the right to appeal to a court and get due process. Without Senate Bill 1822, we don't have any remedy for relief to get the airport charges to be reasonable and non-discriminatory.

This is small business versus a quasi government monopoly not responsive to the electorate. Please get this bill to the floor of the Senate.

Willard Friedman

OMAHA AIRPORT AUTHORITY
LICENSE
FOR NON-TENANT
AUTO PARKING CONCESSIONAIRES
AT
EPPLEY AIRFIELD - OMAHA NEBRASKA

THIS LICENSE is issued this ________ day of ____________, 1990, by the Airport Authority of the City of Omaha, a municipal corporation organized and existing under and by virtue of the laws of the State of Nebraska (hereinafter referred to as "Authority"), to _______________ (hereinafter referred to as "Operator").

WITNESSETH

WHEREAS, the Authority controls and operates an airport known as Eppley Airfield, located in the City of Omaha, State of Nebraska, which airport and any additions or improvements thereto or changes therein which the Authority hereafter makes or authorizes are hereinafter collectively referred to as the "Airport"; and,

WHEREAS, the Operator wishes to conduct an auto parking concession serving customers arriving at and departing from the Airport by locating at a facility off of the Airport ("Non-Tenant Auto Parking Concession").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Authority hereby issues to the Operator a license to conduct operations on the Airport in connection with a Non-Tenant Auto Parking Concession on the following terms:

ARTICLE I - LICENSE TO OPERATE

1. The Authority hereby grants to the Operator a non-exclusive License to conduct certain operations at the Airport in connection with a Non-Tenant Auto Parking Concession, which shall consist of the Operator operating a motor vehicle or van for the pick up or delivery of customers at the Airport for the purpose of parking motor vehicles for those customers at the Operator's off-Airport location. It is understood and agreed that Operator's activities on the Airport shall consist solely of the pick up and delivery of passengers at the Airport for the purpose of parking motor vehicles at the Operator's off-airport location. The Operator shall not solicit business within the Terminal Building or otherwise on Airport property; except, however, the Operator may place a direct telephone line to its offices off of the Airport by placing one telephone on each board located in the Terminal Building currently used by hotels and motels for telephone services, and the Operator shall be entitled to lease advertising space in the Terminal Building at the Airport; the telephone and advertising space to be paid for on the same fee basis as others are charged for such facilities or services.

ARTICLE II - TERM OF LICENSE

1. The term of this License shall extend from July 1, 1990, terminating on June 30, 1991, unless sooner terminated as hereinafter provided. This License may be renewed for successive one year terms on July 1, 1991 and each year thereafter.

ARTICLE III - FEES AND CHARGES

1. The Operator agrees to pay to the Authority a License Fee in an amount equivalent to ten percent (10%) of the Operator's Gross Receipts, as hereinafter defined, for the privilege of operating a Non-Tenant Auto Parking Concession on the Airport.

2. The term "Gross Receipts", as used herein, shall mean the full amount actually charged, either on a cash or credit basis, by the Operator for all motor vehicle parking services to customers originating at the Airport, excluding only Federal, State or Municipal sales taxes or other similar taxes separately stated and collected from customers now of hereafter levied or imposed.

3. The Operator will report to the Authority all income derived from customers originating at the Airport, both cash and credit, whether collected or uncollected, in its monthly statements.

4. The Operator will have the right to conduct its operations on a credit basis, provided, however, that the Operator shall remit the License Fee to the Authority based on the definition of Gross Receipts stated above, without deduction for bad debts or delinquent accounts.

5. The Operator agrees to provide by the twentieth day of each month a statement certified by the Operator as a correct representation of its Gross Receipts during the preceding month. With such monthly statement, the Operator shall remit to the Authority the above stated fee based on its Gross Receipts for the preceding calendar month. License Fees more than thirty (30) days past due will be subject to a service charge of one and one-half percent (1-1/2%) per month, based on an annual rate of eighteen percent (18%).

6. Notwithstanding the provision herein contained for payment by the Operator to the Authority of the license fee based upon a percentage of Gross Receipts, as above provided, it is expressly understood and agreed that the Authority shall not be construed or held to be a partner, associate or joint venturer of the Operator in the conduct of its business, but the Operator shall, at all times, have the status of an independent contractor without right or authority to impose tort or contractual liability upon the Authority.

ARTICLE IV - ACTIVITIES AND OBLIGATIONS OF THE OPERATOR

1. A Non-Tenant Auto Parking Concession is defined as the pick up or delivery of customers at the Airport for the purpose of parking motor vehicles for those customers at the Operator's off-airport location.

2. The Operator agrees that the Authority has the right to adopt and enforce reasonable rules and regulations and that Operator and all of its employees, agents, and servants will faithfully observe and comply with all rules and regulations as may from time to time be promulgated by the Authority, the United States of America, or any department or agency thereof, the State of Nebraska and the City of Omaha.

3. The Operator understands and agrees that the rights and privileges granted herein are non-exclusive.

4. The Operator agrees not to engage in any activities at the Airport not authorized herein.

ARTICLE V - INDEMNIFICATION AND INSURANCE

1. The Operator covenants and agrees to indemnify and save harmless the Airport Authority of the City of Omaha, its members, agents, officers and employees, their successors and assigns, and the City of Omaha, its officers, agents and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of the Operator on the Airport or in connection with its use of the Airport, and the Operator further agrees to pay all expenses in defending any claims made against the Authority; provided, however, that the Operator shall not be liable for any injury, damage or loss occasioned by the negligence or willful misconduct of the Authority, its agents or employees. The Operator and the Authority shall give prompt and timely notice to the other of any claim made or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

2. The Operator shall procure and maintain in effect during the term of the License, insurance with companies licensed to do business in the State of Nebraska, and naming the authority as an additional insured, and containing a cross liability agreement, providing the following coverages:

Comprehensive General Liability Insurance

Bodily Injury	Five Hundred Thousand Dollars ($500,000.00) each occurrence. Five Hundred Thousand Dollars ($500,000.00) aggregate.
Property Damage	One Hundred Thousand Dollars ($100,000.00) each occurrence. Five Hundred Thousand Dollars ($500,000.00) aggregate.

Or alternatively a single limit legal liability policy (public liability and property damage) of not less than Five Hundred Thousand Dollars ($500,000.00).

A copy of each insurance policy or a certificate evidencing the existence thereof shall be delivered to the Authority prior to the effective date of this License. Each such certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days written advance notice thereof to the Authority.

3. The Operator shall furnish to the Authority satisfactory evidence that it carries Worker's Compensation insurance in accordance with the laws of the State of Nebraska.

ARTICLE VI - TERMINATION BY THE AUTHORITY

1. In addition to all other remedies available to the Authority, this License shall be subject to cancellation by the Authority, should any one or more of the following events occur:

   A. If the Operator shall file a petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of the Operator and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or if a Receiver for the Operator's assets is appointed; or if the Operator shall be divested of its rights, powers and privileges under this License by other operation of law.

   B. If the Operator shall default in or fail to make any payments at the times and in the amount as required of it under this License.

   C. If the Operator shall abandon and discontinue the conduct of its Non-Tenant Auto Parking Concession.

   D. If the Operator shall fail to perform, keep and observe all the covenants and conditions contained in this License to be performed, kept and observed by it.

   E. If the Operator shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nebraska, City of Omaha, or Airport Authority of the City of Omaha.

Provided that upon the happening of any of the contingencies recited in subparagraphs B, C, D and E above, the Authority shall give written notice to the Operator to correct or cure such default, failure to perform or breach, and if, within thirty (30) days from the date of such notice, the default, failure to perform or breach complained of shall not have been corrected in a manner satisfactory to the Authority, then, and in such event, the Authority shall have the right at once and without further notice to the Operator to declare this License terminated and surrendered, and provided further that upon the happening of any one of the contingencies enumerated in subsection A hereof, this License shall be deemed to be terminated and surrendered by the Operator, and thereupon ipso facto and without entry or any other action by the Authority the Operator shall terminate, subject to be reinstated only if such involuntary bankruptcy or insolvency proceedings, petitions for reorganization, trusteeship, receivership, or other legal act divesting the Operator of its rights under this License shall be denied, set aside, vacated or terminated in the Operator's favor within forty-five (45) days from the happening of the contingency. Upon the happening of said latter event, this License shall be reinstated, provided that the Operator shall, within ten (10) days, discharge any and all sums of money which may have become due under this License in the interim and shall then remain unpaid and shall likewise fully perform and discharge all other obligations which may have accrued and become payable in the interim. The acceptance of fees by the Authority for any period or periods after a default of any of the terms, covenants, and conditions of this License, shall not be deemed a waiver of any rights on the part of the Authority to cancel this License for failure by the Operator to so perform, keep or observe any of the terms of this License to be kept, performed, and observed by the Operator.

ARTICLE VII - TERMINATION BY OPERATOR

It is understood and agreed that the Operator shall have the right to terminate this License at will at any time prior to the termination date set forth in Article II hereinabove. Upon the occurrence of such termination by the Operator, the Operator shall immediately close its operations on the Airport and shall further cease service to customers who are arriving or departing from the Airport.

ARTICLE VIII - SUCCESSOR AND ASSIGNS BOUND BY COVENANTS

1. All covenants, stipulations and agreements in this License shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

ARTICLE IX - SUBORDINATION PROVISION

1. It is understood and agreed that this License shall be subordinate to the provisions of any existing or future agreements between the Authority and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of Federal rights or property to the Authority or the City of Omaha for Airport purposes, or to the expenditure of Federal funds for the development of the Airport.

ARTICLE X - RECORDS AND REPORTS

1. The Operator shall keep adequate and accurate records and books of account for the purpose of enabling it to prepare and submit proper monthly reports of Gross Receipts to the Authority. The records and books of account shall be maintained within the City of Omaha for a period of two (2) years and shall be open, at all reasonable hours, for examination and audit by authorized representatives of the Authority. The Operator's monthly reports of Gross Receipts shall show such breakdown and detail as may be reasonably required by the Authority as a basis to accurately reflect the License fee due hereunder.

ARTICLE XI - FEDERAL REQUIREMENTS

1. The Operator agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, the Operator may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

ARTICLE XII - GENERAL PROVISIONS

1. Notices to the Authority provided for in this License shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to the Executive Director, Eppley Airfield, Omaha, Nebraska, and notices to the Operator if sent by certified or registered mail, postage prepaid, addressed to

   ____,
   or to such other respective address as the parties may designate to each other from time to time in writing.

2. The Operator represents that it has carefully reviewed the terms and conditions of the License and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by this instrument.

3. Where this License speaks of approval and consent by the Authority, such approval is understood to be manifested by act of the Executive Director, except as otherwise expressly stated in this License.

IN WITNESS WHEREOF, the parties have caused these presents to be signed by their duly authorized officers.

ATTEST	AIRPORT AUTHORITY OF THE CITY OF OMAHA
______________________________	______________________________
ATTEST	OPERATOR
______________________________	______________________________

Air Transport Association ata OF AMERICA

1709 New York Avenue, NW
Washington, DC 20006
(202) 626-4186

LARRY P. BARNETT
Vice President
Government Affairs

May 3, 1990

Honorable Howard M. Metzenbaum
Chairman
Subcommittee on Antitrust, Monopolies,
and Business Rights
Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

Enclosed is a statement for the record submitted by the Air Transport Association, which represents the scheduled airlines, presenting the views of the airline industry with respect to S.1822. We respectfully request that the statement be made a part of the Subcommittee's April 24, 1990, hearing record.

We appreciate your consideration of this request.

Sincerely,

Larry P. Barnett

cc: All Subcommittee Members

Statement of the Air Transport Association
before the
Antitrust, Monopolies & Business Rights Subcommittee
of the Senate Judiciary Committee
on S. 1822
April 24, 1990

On behalf of this nation's commercial airlines, the Air Transport Association wishes to express appreciation for this opportunity to submit a statement for the record on S. 1822, legislation addressing the business relationship between airports and businesses which derive their revenue from airport operations.

As you know Mr. Chairman, airports in the United States are typically publicly owned and operated and financed through fee arrangements with all businesses which rely on the airport as the primary source of their revenue. This system serves the traveling public well because it provides for an equitable distribution of airport operating expenses and capital development costs to those who benefit financially from airport operations.

Recently, however, a series of initiatives have been undertaken in the name of "consumer protection" by off-airport rental car companies in an effort to block airports from collecting appropriate revenue from their airport dependent operations. Notwithstanding this broad-based attack, the right of airports to impose such charges has been upheld almost universally in State and Federal courts. In addition, Congress has repeatedly rejected previous attempts to legislate restrictions on the use of off-airport fees.

The self-sufficiency of the nation's major airports is critical to our national system of air transportation. The traveling public relies on airports, just as it does airlines to make today's mobility possible. However, the public does not make direct payments to airports for services rendered. Rather, those payments accrue indirectly through assessments made by airport operators on airlines and the many other businesses which benefit from the airport.

Airports collect revenues from both aeronautical -- airline and general aviation -- operations, and from non-aeronautical operations. The revenue derived from car rental companies comprises 28 percent of all non-aeronautical revenue generated at airports nationwide. Next to parking concessions, it is the single largest source of "landside" revenue for airports.

If the proponents of S. 1822 are successful, and off-airport car rental companies are no longer required to cover their fair share of the cost of airport operations, those costs will be shifted to the customers of other airport services. The Department of Transportation (DOT) has estimated that restrictions on the ability of airports to impose off-airport fees would cost airports up to 5.3 percent of their existing revenue base. Unfortunately, as we will explain, the revenue loss would ultimately far exceed 5.3 percent.

To remain competitive, many -- if not most -- on-airport car rental companies would be compelled to shift their operations off-airport. They could not remain on-airport and compete with off-airport companies providing a vitrually identical service with a built-in competitive advantage of lower operating costs. No business is going to pay millions of dollars in franchise fees when it can conduct the same level of business for a fraction of that amount immediately outside airport boundaries.

Airport car rental companies contribute almost $200 million annually to airport operations. If the present off-airport portion of that revenue is lost, DOT estimates that airports might have to raise other airport fees and charges by as much as 12 percent to compensate for lost income. This increase in operating cost would be paid by airline passengers.

If, however, the same calculations are performed under the scenario where traditional on-airport rental car companies are forced to move off-airport, the additional charges that are passed on to passengers become astronomical. The magnitude of these increases are exemplified by one major airport which calculated that the loss of its $7 million in rental car revenues would result in a 182 percent per square foot annual increase in airline terminal rent or an increase of 117 percent in landing fees.

Enactment of legislation like S.1822 would put substantial economic pressure on airlines, which can ill-afford increased operating costs. Airline profit margins for all of last year were only 0.4%. As the Wall Street Journal reported last week, "One piece of evidence that suggests passengers haven't been gouged by carriers since deregulation is industry profitability. If carriers were practicing oligopolistic pricing, then presumably it would show up on their bottom lines. So far, it hasn't happened."

Contrary to what the proponents of S.1822 argue, the bill is not "consumer protection" legislation. It is profit protection legislation. Private profits of off-airport rental car companies will be protected against publicly sanctioned revenue raising by governmental airport authorities to support public policy. That policy, based on the sound principal that those who profit from the airport should contribute fairly to its support, remains a good one. Without the fees from off-airport rental car companies, the burden of paying airport costs would shift wholly and unfairly to the customers of on-airport companies and, coincidentally, upon the majority of airline passengers who do not rent cars at all.

For these reasons, we urge the subcommittee not to take action on this legislation. Thank you.

ANDERSON, HIBEY, NAUHEIM & BLAIR
1708 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20009
(202) 483-1900

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS

TELEX: [illegible]
AHNB UR
TELECOPIER: (202) 483-7462

May 15, 1990

Honorable Howard Metzenbaum
Chairman, Subcommittee on Antitrust,
Monopolies and Business Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Attention: Kelly Signs

Dear Mr. Chairman:

A number of members of Americans Against Unfair Airport Fees have asked us to request that their letters be made a part of the formal record of the hearing on S. 1822. For your convenience, I have attached copies of their letters, although you may already be in possession of the originals. Included with these letters is correspondence between Jim Greene, a former Thrifty licensee from Sioux Falls, South Dakota, and the local airport authority, describing how the airport access fee and airport policies restricting the number of on-airport companies contributed to his company going out of business.

Thank you for your patience and assistance. If you have any questions, please do not hesitate to give me a call at 483-1900.

Sincerely,

Kristin E. Paulson

Kristin E. Paulson

DOLLAR
RENT A CAR

Dollar Systems, Inc.
Executive Offices
6141 W. Century Blvd.
P.O. Box 45048
Los Angeles, CA 90045-0048
(213) 776-8100 • Telex 673373

April 2, 1990

The Honorable Howard M. Metzenbaum
SR-140 Russell Senate Office Building
Washington, D.C. 20510-3502

Dear Senator Metzenbaum:

I am writing to express Dollar Rent-A-Car Systems, Inc.'s strong support for the Fair Airport Access Assurance Act (S.1822). Even though Dollar is on-airport at over 120 airports (which collectively represent approximately 90% of the deplaning passenger traffic in the United States) we support this legislation, which would amend the antitrust laws and make it unlawful for airports "to impose an unreasonable and unjustly discriminatory tax, fee or condition" on off-airport companies when the tax, fee or condition would hurt competition. In recent years these fees have proliferated at ever increasing levels with airports typically imposing an 8-10% gross receipts fee on off-airport companies, and sometimes imposing a fee as high as 15%.

Dollar, though it is an on-airport company, opposes these fees because they threaten the free market competitive atmosphere that has enabled our company to flourish. For years competition and consumer choice were stifled in the car rental industry by the conspiratorial action of a few major car rental companies, with the tacit consent of the airports. Through 1974, our company struggled to obtain operating privileges on U.S. airports. Repeatedly, we were turned away because of airport policies. These policies, created at the urging of, and designed to protect the "Big Three" rental car companies - Hertz, Avis and National, limited the number of concessions awarded to three, and were usually granted either on the basis of which company could pay the highest minimum guarantee, or behind closed doors on a negotiated basis to the same three principal concessionaires. Under these conditions, Dollar was barely able to survive, much less grow. Then, in 1974, the Federal Trade Commission (FTC) initiated an action against Hertz, Avis and National, charging them with conspiring to limit on-airport competition at U.S. airports. The FTC action led to a consent order against these three companies. Primarily as a result of the FTC litigation, the airports gave access to more than three on-airport car rental concessionaires. Nonetheless, today, most airports only permit five on-airport car rental

United States, Canada, Latin America, Caribbean, Europe, Mid-East and Africa

concessionaires. While the FTC Consent Order opened the door to free and fair competition, competition in the rental car market has not been restored to levels that it would have attained absent the conspiracy.

On-airport companies, like Dollar, enjoy the advantage of greater access to the traveling public, counters in the baggage claim area and close-in vehicle access. By contrast, the primary benefit off-airport companies receive is the use of the airport public roadway system. Under these circumstances it is not fair, and it would stifle competition, for the airports, under pressure from companies like Hertz, to continue to limit the number of companies which can operate on-airport while at the same time imposing fees on off-airport companies substantially equivalent to the fees imposed on the on-airport companies.

You might well ask why an on-airport company such as Dollar is on the side of off-airport companies. The reason is simple: our company's success is directly attributable to the atmosphere of free competition which flourished after the FTC Consent Order. The imposition of unfair and discriminatory access fees by the airports at the urging of Hertz will undo much, if not all, of the progress that has been made during the last few years to promote competition and assure maximum choice to the consumer. The antitrust-immune airports should not be permitted to do for Hertz, what Hertz was forbidden from doing with Avis and National 14 years ago: namely, create a monopoly. Although we are an on-airport company, we oppose any fees levied by airports on off-airport companies (whether car rental or not) that exceed what would be an off-airport company's fairly allocated portion of the costs for the construction, maintenance and policing of the airport's ground transportation facilities.

Off-airport rental car companies' primary competitive edge has traditionally been lower prices, which the airports now seek to raise through excessive access fees. Despite threats by Hertz to move off-airport if these fees are not imposed, no on-airport companies, including ours, would give up the competitive advantages they and we currently enjoy. Those foolish enough to do so would quickly be replaced by off-airport companies anxious to be on-airport. Dollar, and other on-airport companies, contracted to be on-airport because there are specific economic and competitive advantages to being there.

Federal intervention is necessary in the very limited way provided by S.1822 to ensure simply that enactment of local access fee legislation is fair and reasonable. The rental car passenger traveling from one part of the country to another has no political representation to protect him from usurious fees and charges when he deplanes. The Federal government has the responsibility to build and maintain the best air traffic system in the world and to promote and protect an environment where competition flourishes and the interests of the traveling public are protected.

Dollar supports S. 1822 because it is the only way to ensure that passengers get a fair deal on prices, that the market will continue to expand, that smaller companies can enter or stay in the market, and that competition will be encouraged, not stifled. Again, I strongly urge you to support S.1822.

Sincerely,

Gary L. Paxton
Senior Vice President
Operations & Properties

ENTERPRISE RENT-A-CAR
8850 Ladue Road, St. Louis, Missouri 63124 314-863-7000
Corporate Headquarters

April 10, 1990

The Honorable Howard M. Metzenbaum, Chairman
SR-140 Russell Senate Office Building
Washington, DC 20510-3502

Dear Senator Metzenbaum:

We are writing to urge your support for The Fair Airport Access Assurance Act (S.1822), making it unlawful for an airport to "impose an unreasonable and unjustly discriminatory tax, fee or condition" on off-airport companies like ourselves. Conditions as they now exist make doing business for someone like ourselves almost untenable and are beginning to sharply restrict and limit competition in general. Enterprise respectfully requests that this letter be included in the formal record of the hearing to be held on the Fair Airport Access Assurance Act by the Antitrust, Monopolies and Business Rights Subcommittee.

We currently operate in 60% of the states and 80% of the major cities in the U.S. Furthermore, we will be opening facilities in your particular state within the next 24 months, so your help is critical. Our operation includes more than 600 offices, 5000 people, and a fleet in excess of 100,000 cars. As you will see from the next paragraph, our business is a little unusual but, hopefully, it will be clear to you why the airports' recent bad behavior has begun to cripple us.

Our business consists primarily of neighborhood rentals for people whose cars have been wrecked or need repair, and long term small fleet leasing. However, through word of mouth and accommodation to people who send us rental business, we provide our customers cars as they travel. Therefore, we do service airports regularly, but in very small numbers, at greatly reduced prices.

Today, we almost have to "sneak" to accommodate many of our customers. Our business is sporadic enough in many cities to not justify purchasing exorbitant licenses, and in only two cities do we have vans operated by our sister affiliate companies. Unfortunately, the airports and the major daily rental companies are attempting to choke most of us who are marginal suppliers because we have begun to erode some of their business with the leisure travelers. We believed the 1976 FTC Consent Order would stop this.

You're probably aware many airports have begun charging fees as high as 15% to off airport people like ourselves, placed onerous restrictions on where people must be picked up and have asked, in one case, that we supply certified quarterly financial statements when we don't even prepare quarterly certified statements. These fees and activities could put us out of business at our airport.

The airports' actions are absolutely going to drive the cost of renting sky high. It will deprive customers who might be budget conscious. In a nutshell, this behavior is anti-consumer, will greatly hurt the small operators, and even people like ourselves who will remain in business will soon be excluded from providing services.

Serving Automotive Transportation Needs Coast To Coast Since 1957

We are willing to pay a fair and reasonable fee for our real usage of airports' properties. We believe S.1822 will provide the federal standard necessary to establish such fees. All of us at Enterprise hope that you will do everything you can to ensure that S.1822 is enacted by Congress this year.

Sincerely,

Douglas S. Brown
Executive Vice President

DSB/bss

P.S. IMPORTANT

Any arguments by airports, or threats by Hertz, that off-airport fees are necessary to keep rental companies inside the terminal, are "bull cookies" (please forgive the expression). With NO FEES in the 1970's, Budget Rent A Car went from off-airport to on. With NO FEES during the 1980's, Dollar Rent A Car went from off-airport to on. Why would you or anyone else believe anything's different today tnan the behavior which caused the FTC Consent Decree in 1976? The proposed Bill (S.1822) provides the same fairness and safety to small and occasional use operators that you currently guarantee in the Airport and Airways Improvement Act, Section 511(a)(1). Please, help us gain control over this monopolistic, outrageously bad behavior!

PACIFIC
Car Rental

16229 Pacific Highway South • Seattle, Wash. 98188 • (206) 433-0709

April 12, 1990

The Honorable Howard M. Metzenbaum
SR-140 Russell Senate Office Building
Washington, D.C. 20510-3502

Dear Senator Metzenbaum:

I am writing to you as a concerned small businessman and as a member of Americans Against Unfair Airport Fees to urge you to support the Fair Airport Access Assurance Act (S. 1822) which would require that airports only impose reasonable and non-discriminatory fees on off-airport companies. I understand that a hearing is scheduled for April 24, 1990 on S. 1822 and I would like to ask you to include the accompanying poem in the formal record of that hearing.

Sincerely,

Terry R. Treischel
General Manager,
Pacific Car Rental

PACIFIC
Car Rental

16229 Pacific Highway South • Seattle, Wash. 98188 • (206) 433-0709

ODE TO SMALL BUSINESS

For eight long years I've scraped and fought,
To build this little business at considerable cost;

Hours of sweat, every nickel and dime,
Has gone into building this business of mine.

I'm in the business of renting cars,
It's tough, competitive, but most businesses are.

My company's off airport - don't you see?
Its the only place we're allowed to be.

Our property rents are high and our cars rent cheap;
A necessary evil, we must compete.

We work on a margin of less than 3 percent,
Sad but true, and its all spent.

We even joined a franchise to help our cause,
To keep from getting swallowed by the big boys' jaws.

And now here comes the Port to fight us too!
They want 10 percent of my 3 percent, that won't do.

Our Port is buying all the property,
The land, the business, as far as you can see.

So the need for money can't be their goal,
In fact a need has not been shown.

I'm sure in the end the Port will win,
And for my employees the search will begin.

To find new jobs - a place to work,
Shouldn't be a problem, they'll work for Hertz.

Yes, the Ports with all their wealth and size,
Are sending a message to us little guys:

"Small Business - The American Dream is dying out,
Give up now -- You've got no clout."

Well we're still here and we're still fighting,
Let's hope this message has been enlightening.

We're the underdog and we need your support,
To protect our businesses from the Ports.

GROSVENOR
HOTELS GROUP 245 South Airport Boulevard, South San Francisco, CA 94080 • (415) 589 7200

18, April 1990

The Honorable Howard M. Metzenbaum
United States Senate
Washington, DC 20510

Dear Senator Metzenbaum:

We are writing to urge you most strongly to support the Fair Airport Access Assurance Act (S.1822), which would make it unlawful for an airport to impose "unreasonable and unjustly discriminatory taxes, fees or conditions" on off-airport companies, especially when its effect would be to limit or restrict competition (for such businesses as hotels, rental car agencies, and off-airport parking facilities).

As the Director of Operations for seven hotel properties, the majority of which offer "courtesy airport shuttle services", I am greatly concerned with the growing number of airport commissions that have begun to charge access fees, especially those airport commissions which charge fees based upon a percentage of an off-airport business' gross receipts. This type of fee may severely restrict the services my hotels can offer to our guests....courtesy shuttle trips have already been curtailed in number and may have to be eliminated altogether if the fees increase. The only other alternative may be an increase in rates charged to our guests. Such an activity is not conducive to the increase (or even maintenance!) of tourism levels so necessary to the economy of the United States.

A Senate hearing has been set for Tuesday, 24 April, on S1.822. I urge you to support this measure and to encourage your colleagues to do likewise.

I appreciate your interest in supporting our efforts to promote tourism to the U. S., and I look forward to your comments on this measure.

Sincerely,

Jim A. Raine
Vice President
Grosvenor Properties, Ltd.
Hotels' Division

JAR/lms

★★★★★
General
RENT-A-CAR
...glad to see you.

Dynasty Express Corp.
d/b/a General Rent-A-Car
2741 N. 29th Avenue
Hollywood, Florida 33020
(305) 926-1700 Fax: (305) 921-1878
Toll-free reservations 1-800-327-7607

April 19, 1990

Howard M. Metzenbaum, Chairman
SR-140 Russell Senate Office Building
Washington, D.C. 20510-3502

Dear Senator Metzenbaum:

The Antitrust, Monopolies and Business Rights Subcommittee of the Senate Judiciary Committee will be holding a hearing on April 24, 1990 on the Fair Airport Access Assurance Act (S. 1822). General Rent-A-Car would like this letter included in the record of the hearing as an unequivocal expression of the urgent need for Congress to assure a competitive marketplace on-airport and off-airport for both the rental car consumer and the rental car service provider. The only rental car company opposing this legislation is Hertz, for reasons that certainly are not to assure a competitive rent-a-car marketplace for either the on-airport or off-airport rental car providers.

General has been aggressively seeking every opportunity to enter into the on-airport marketplace only to be constantly frustrated by the limited opportunities to compete in that market. This is due to the oligopolistic market power of the historic on-airport rent-a-car vendors caused by the inadequate number of airport rental car counter positions (concessions) available for bidding at most airports. For example, an airport with only four rental car counter positions automatically locks in the old-line rental car firms such as Hertz, Avis and National because of their historic market power in airports. The fact that airports do not bid percentage rentals, only minimal annual guarantees, assures that the historic rental car firms automatically receive on-airport counter space and that such incumbents continue to dominate the market through this local government created oligopoly.

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like this Chrysler LeBaron Convertible

General believes that the proposed legislation should require that all airports provide for bid purposes at least ten individual on-airport rental car counter positions for which all qualified vendors compete through the bidding process. (At least one should be made available for bidding by minority rental car firms which would meet the 10% requirement of federal law for participation in on airport concessions.) If less than ten bids are received, obviously the number of counter positions not required would not be used until the next round of bidding. At those airports where traditional off-airport companies such as General are not provided the opportunity to competitively bid on ten on-airport opportunities, regardless of the airport reason, such off-airport rental car companies should then only have to pay for their share of the value of the services provided all off-airport vendors (aeronautical and non-aeronautical) that utilize the landside of the airport to do business. In no event should an off-airport rental car provider or any other off-airport vendor of service be charged any differently than an airline is charged for using the airport provided they assume the same airport obligations as does the airline.

Competition in the car rental industry has been suppressed by anti-competitive practices among the traditional on-airport major car rental companies who still to this day remain in control of the on-airport market. I am sure, Senator, that you are aware of the FTC Consent Order still in force against Hertz, Avis and National for their conduct in successfully forcing many smaller, off-airport companies out of both the on-airport and off-airport rental car markets. Hertz, Avis and National, despite this Consent Order, still dominate the on-airport rental car market and Hertz is attempting to control the off-airport market by preventing off-airport rental car firms from separately charging for collision damage waivers (CDW). As previously stated, this continual domination is because the Consent Order did not deal with the fact that when airports limit in their bid specifications the number of airport rental car counter bidding opportunities they negate the objective of the Consent Order. The purpose of the Consent Order was to provide greater on-airport competition so as to reduce the market domination of the historic on-airport oligopoly. This oligopoly continues today only because of the limited opportunity for new entry rental car vendors such as General to enter into the on-airport market due to the failure of all airports receiving federal aid to supply an adequate number of competitive on-airport rental car counter positions for competitive bidding. As stated, we strongly believe such adequate number should be not less than ten bidding positions.

The off airport car rental industry is a vital part of the air transportation service system of our nation. They alone have been able to maintain a competitive rental car market for the airport consumer. The off airport car rental industry has done so not due primarily to the FTC Consent Order but because of the expansion of the leisure travel market after airline deregulation, and because they provide a low-cost, high quality alternative to the more convenient but more expensive on-airport companies. Their viability is threatened, however, by both unreasonable and discriminatory airport access fees and the inability to enter the on-airport market sufficiently to become a major on-airport competitor.

Legislation is needed to continue to promote a healthy and competitive atmosphere in both the on-airport and off-airport rental car markets. Please support the Fair Airport Access Assurance Act (S. 1822) to achieve this end. It is extremely important that such legislation contain provisions to provide off-airport firms the opportunity to bid on at least ten on-airport counter positions at all federally funded airports for the reasons stated herein.

Sincerely yours,

F. Paul Silicato

F. Paul Silicato
President, C.E.O.

FPS:dd

AVIS RENT A CAR SYSTEM / 5207 MONKHOUSE DRIVE, SHREVEPORT, LOUISIANA 71109-6599 / (318) 631-1839

AVIS
LICENSEE

AIRLINE CAR RENTAL, INC.

May 2, 1990

Senator Howard M. Metzenbaum
Chairman, Antitrust, Monopolies and Business Rights Subcommittee
SR-140 Russell Senate Office Building
Washington, D.C. 20510-3502

Re: The Fair Airport Access Assurance Act, S. 1822

Dear Mr. Chairman:

I am writing to thank you for holding a hearing on the Fair Airport Access Assurance Act (S. 1822) and to encourage you to continue to support this important legislation. For many years I have fought the imposition of a 7% gross receipts fee in Shreveport on my off-airport company both on a local level and through membership in Americans Against Unfair Airport Fees. I believe my story is illustrative of how the airports use their power to fix prices and manipulate competition in the market, all under the protection of their status as a governmental entity immune from the antitrust laws.

Airline Car Rental, Inc., a closely held family corporation, was formed on June 1, 1950, and does business as an Avis Rent A Car System Licensee in Shreveport and Monroe, Louisiana. We continually operated our car rental business on the Shreveport Regional Airport property until September, 1977, and continue to operate our car rental business in Monroe on the Monroe Regional Airport property.

In July, 1977, the Shreveport, Louisiana, car rental concessioners met with the management of the Shreveport Regional Airport to discuss the upcoming bid proposal for the three car rental locations at the Airport. At the meeting, management informed the prospective bidders that additional fees were to be assessed and that each successful bidder would be required to build new car rental service facilities on airport property which we would own for ten (10) years after which, the building would revert back to Airport property and would in turn be leased back to the current car rental concessioners. The car rental concessioners tried unsuccessfully to negotiate the contract to what was currently a fair and equitable arrangement. Airport management told the concessioners that the contract was not negotiable and we had no choice but to accept the bid contract as presented because, "We are the only game in town and no car rental company could survive unless it did business on Airport property."

Airline Car Rental, Inc., submitted its bid as proposed by the Airport but subsequently was not successful as a bidder for one of the three (3) on-airport car rental locations.

Upon losing the car rental on-airport location, we approached the Shreveport Airport Authority and requested they supply additional space for a fourth car rental concessioner as space was available and by which the Airport would maintain the revenue that they would lose by our vacating the premises. The Authority refused our request and we were told to vacate the airport premises by September 30, 1977.

We relocated our operations off-airport, but in close proximity to the Airport, and commenced using shuttle buses to transport our customers to and from our off-airport location to the Airport. The facilities that we now occupy cost approximately $748,000.00.

The car rental concession contract was for a period of five (5) years. During that five year period, Airline Car Rental's gross rental revenue averaged $780,781.00 per year. It cost Airline approximately $93,000.00 per year in increased costs by operating off-airport, these costs being for shuttle buses, bus drivers, uniforms, increased insurance, gasoline expenses, etc. Due to the investment in facilities and buses, Airline was unable to bid on one of the, now four (4), on-airport car rental locations in 1982.

During the ensuing period Airline Car Rental, as an off-airport car rental operator, is not permitted to solicit business on the Airport. Airline's shuttle buses are required to park only in areas designated by the Airport Authority. Our shuttle bus drivers are not permitted out of their buses except to open bus doors for their passengers. Our shuttle operations are conducted solely on the streets and roads of the City of Shreveport, not on airport property, which provide access to the terminal buildings.

No on-airport car rental companies at the Shreveport Regional Airport have moved to locations off-airport since Airline Car Rental vacated the premises. Airline Car Rental, Inc., did not voluntarily move off-airport but was required to move by the Shreveport Airport Authority.

On April 1, 1985, the Shreveport Airport Authority adopted a resolution which established regulations affecting car rental agencies which do not have a concession from, or lease with, the Authority. Among other things, the regulations provide for the payment by such businesses of seven per cent (7%) of their gross receipts to the Shreveport Airport Authority.

The market of supplying rental cars to patrons has become more competitive in recent years. Profit margins of car rental companies have dropped with the increased competition. Various airports around the nation have granted economic relief to the on-airport car rental companies to allow them to remain competitive.

The Shreveport Airport Authority maintains that they are a participant in the market place and not a regulator. The only reason for the resolution is so that the Airport can maintain operating revenues that the car rental concessioners provide and to prevent any other car rental concessioners from leaving the Airport.

We agree that the Airport needs such revenues to maintain funds with which to operate. We likewise agree that the Airport should charge fees commensurate with use of the Airport properties. We do not agree with the method chosen nor the amounts.

It is fair to say that we derive benefits from the Airport and its patrons. It's also fair to say that any business derives benefits from services provided by a government agency, i.e. public streets, court houses, state health facilities. But, at what point does a government agency have a right to go beyond the normal collections of revenue to the point of controlling a specific market? It is the position of Airline Car Rental, Inc., that the Shreveport Airport Authority has now placed themselves in that enviable position.

In July, 1987, the City of Shreveport provided the bid specifications for Automobile Rental Concession for the Shreveport Regional Airport. Among other things, the Airport Authority has increased its fees to the on-airport concessioners over twenty-five per cent (25%). The prospective concessioners once again met with Airport management to negotiate a more reasonable contract. The Airport Manager's response to this was, "There will be no negotiation on the percentage fees charged to on-airport car rental concessioners, and your only alternative to this is to leave the Airport and to be charged the fees of the off-airport car rental companies."

We believe that this is the Airport's willful ability to control a market and to fix fees as it sees fit without negotiation. At what point is this fair and reasonable or pure monopoly?

As you may be aware, Airline Car Rental, Inc., has sought relief through the Federal Court System. It appears that the Courts agree, as we do, that airports have the right to raise revenues for the purpose of maintaining the airports' operation. The Courts also agree that the fees charged off-airport car rental companies are detrimental to those companies' profitabilities. But, the courts will not and cannot determine what are fair and equitable fees. Therefore, we look to those officials who have the ability to consider these issues and act accordingly based on their knowledge and understanding of small business and the needs of a specific industry. Government agencies should not be in the business of restraining fair trade, nor should small business look for unfair relief from those agencies when not justified.

Airline Car Rental, Inc., it's owners and employees, feel that it is necessary to find a common ground where small business, given a choice, can provide a fair and necessary service to the traveling public without burdensome restraints.

I respectfully ask that you enter this information into the committee's record.

Yours truly,

AIRLINE CAR RENTAL, INC.
Avis Rental A Car System Licensee

W. Randal Scoggin

W. Randal Scoggin
Vice President

WRS:ds

Hertz

April 12, 1990

The Honorable Strom Thurmond
U. S. Senate
Washington, D. C. 20510

Dear Senator Thurmond:

Since you are studying the issue of gross receipts fees on off-airport car rental companies, I would like to share our experience with you. Five years ago, my husband and I purchased Helmerich Drive It Yourself, Inc. which is the Hertz System Licensee in Erie, Pennsylvania. Although my husband is employed full time at another job, he is nearing retirement and we thought this business would supplement our retirement income as well as be an investment we could pass on to our children.

About 30 years ago, the Erie Airport Authority asked the founder and then owner of this company to establish a location at the airport for incoming travellers. That was done, and eventually the company closed its downtown location and operated exclusively at the airport. Over the years, a service building was built and later expanded; fences were put up; and parking lots were paved. All of these improvements were done at company expense on airport property.

During those years too, Avis and later National Car Rental began operations in Erie at the airport. As each new company came into the airport, it had to guarantee a minimum fee per month or 10% of its gross revenue which ever was higher. The minimum fee was well below what the already established businesses were paying per month. Budget Car Rental began doing business at a location across the street from the Erie Airport, but they wanted a rental counter inside the terminal building.

Shortly after we purchased our Hertz Franchise in 1983, some political upheavals in Erie caused the President of the Erie Airport Authority to lose his position. The rest of the Board resigned in protest, and we found ourselves under the direction of a new and inexperienced Board of Directors for our Airport.

This is a copy of my letter to the Senators on the sub-committee

HERTZ SYSTEM LICENSEE
Helmerich Drive It Yourself, Inc.
4157 West 12th Street
Erie, Pennsylvania 16505
Telephone 814 [illegible]

These Directors decided not to add Budget as a fourth car rental as had been done previously with each of the other companies, but to let all interested companies bid for THREE spaces in the airport. The MINIMUM bid was set at just about what our company had paid in commissions the previous year. To add fuel to the fire, the previously mentioned deposed Authority President also threw in a bid for his Ford Motor Company car rental. He won! He had bid $56,000 a year for a spot that Hertz had paid $40,000 for the year before!

Without going into all the squirming that followed, the next step was that those bids were thrown out and the whole process started over. You can imagine what that did to the already outrageously high bids - they went higher yet. We bid higher than we thought we could possibly afford, and we lost by $600. The majority of airport commissions are 10% of gross revenue. The winning bid in Erie was 15% of our previous gross revenue. The enticement for us to all bid so insanely was that these were for a five year contract with two five year renewable options - 15 years!

By losing the bid for airport space, we lost not only the rental counter in the terminal which we rented from the airport, but also the garage, service building, gas tanks, parking lots, fences and business office that we owned on airport property. If we did not sell those within 90 days to the winning bidder they would become airport property. What do you think that does to your negotiating power? We sold those for 1/2 of their appraised value. And were faced with the task for establishing a new location elsewhere or simply poing out of business.

By some miracle of good or bad luck we were able to purchase two pieces of property adjacent to the airport, remodel, and move in within our 6 week deadline. It cost us over $200,000 to replace what we had just sold for $27,000. We now have the added expense of owning, maintaining, and operating a shuttle van and hiring someone to drive it. We did all that because we wanted to stay in business and we thought we could make a go of it off-airport by offering the very best service possible. It seemed to be working even though we were not allowed any signs or courtesy telephones in the airport. Then the Erie Airport Authority began to issue us a traffic citation every time we went on airport property. We amassed over $4,000 worth of citations before a judge put a halt to that. Our legal fees have so far amounted to $12,000.

Hertz

The Airport Authority wrote us that we could pick up our customers if we paid 15% of our gross revenue for the privilege - but they assured us we would only have to pay that on the revenue we derived from airport customers. Even though the car rentals in the airport were paying 10%!

We have filed suit in State Court against this UNREASONABLE imposition of fees and that is still pending.

This issue is not just a case of Alamo raging at Hertz on a national scale. It is also a case of small businesses trying to survive when they are at the mercy of an autonomous group of people on an Airport Authority who are virtually accountable to no one.
Mine is a SMALL BUSINESS. We grossed $500,000 last year. We employ 10 people. We pay taxes. and we spend money in our community buying cars, gasoline, windshields, oil filters, snow brushes. etc etc etc. We are an asset to our community albeit a small asset. This business should not be destroyed by unfair airport practices. Please help us by supporting the Fair Airport Access Assurance Act (S. 1822). We have no other protection.

Thank you,

Eran Swartzwelder

Eran Swartzwelder, Vice President

P. S. I know this is too long, but it is a long story!

HERTZ SYSTEM LICENSEE
Helmerich Drive It Yourself, Inc.
4157 West 12th Street
Erie, Pennsylvania 16505
Telephone 814 / [illegible]

Ugly Duckling
RENT-A-CAR
"AMERICA'S SECOND CAR"®

April 5, 1990

Mr. Gordon J. Humphrey (R-NH)
SH-531 Hart Senate Office Building
Washington,D.C. 20510-2901

Dear Senator Humphrey:

It has come to my attention that there will be a hearing on April 24, 1990 on the Fair Airport Access Assurance Act, S.1822, a bill which would prevent airports from imposing "unreasonable and unjustly discriminatory" fees on off-airport companies. Ugly Duckling Rent-a-Car secures almost none of its business from customers passing through the airport. Thus, we are neither an "on-airport," nor an "off-airport" company. Nonetheless, the fees imposed by the airports affect the structure of competition in the car rental industry and we feel it important to offer a few brief comments.

First, we are opposed under any circumstances to the imposition by the airports of 8-15% gross receipts fees on the off-airport companies. Such fees are morally indefensible as they bear no relation to the service the airports provide to the off-airport companies. However, we do believe fees should be imposed on the off-airport companies based on usage, perhaps on a per trip basis.

Second, it is always dangerous for governmental entities to interfere with market mechanisms, as the airports are doing, by imposing gross receipts fees on off-airport companies for the privilege of running a courtesy van on the airport's public roadways, while at the same time on-airport companies voluntarily contract to pay substantially the same fee for an on-airport counter, close-in parking lots, advertising, and greater access to deplaning passengers. This is especially true given that the airports limit the number of companies which can operate on-airport in the first place.

UGLY DUCKLING RENT-A-CAR CORPORATE OFFICE •1240 East Missouri • Phoenix, Arizona 85014
1-800-THE DUCK • (602) 230-1388

Your decision on the Fair Airport Access Assurance Act (S.1822) will have a significant effect on the structure of the car rental industry. I hope that in the course of your deliberations you will take my remarks into account.

Sincerely,

Frank Kapilow

Frank Kapilow, President
Ugly Duckling Rent-A-Car

Licensee
3432 E 1st Ave
Milan, IL 61264
309 762 9367

Out of Town Reservations
1-800-FOR-CARS

Thrifty Car Rental

9 April 1990

Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon,

As the owner and operator of Thrifty Car Rental for the Quad City Airport, servicing Moline and Rock Island, Illinois, plus Davenport and Bettendorf, Iowa, I am concerned about the upcoming hearings on the Fair Airport Access Assurance Act, S. 1822 to be held on 24 April 1990.

There has been a growing trend across the nation for airports to impose gross receipt fees for off-airport car rental companies. As an off-airport business, these companies do not use any of the airport facilities other than the roadways and curbsides to pick up travelers who have already pre-reserved their services. Because they are not located on airport property and do not require counter area within the terminal or multiple parking spaces on the grounds, the off-airport car rental company provides an alternative for the traveler who may choose a little less convenience in order to save a few dollars.

Almost two years ago, the Quad City Airport in Moline, Illinois, established an access fee for off-airport car rental companies. For 8% of the gross revenue (minimum $6,000.00 yearly), the off-airport rental car operator was permitted use of the roadways to pick up their customers, and provided one parking space, located within the confines of the rental car parking lot, further away from the terminal than the parking area designated for other courtesy vehicles. Attempts to change the 8% fee to a more reasonable and fair per trip or per customer basis were futile.

The rental car industry at the Quad City Airport has changed significantly since the implementation of the off-airport access fee. Of the three off-airport rental car companies (Thrifty, Dollar, and General) who initially signed the access agreement two years ago, today only Dollar continues to serve the airport customer as an off-airport option. Unable to maintain a specific level of business from airport arriving customers, General's $500. monthly minimum exceeded 8% of their revenue, and General has since given up the airport market. Realizing our business could not remain both competitive and viable with the additional 8% expense, the airport access fee forced us to move the Thrifty business into the terminal.

The consequences of inappropriate or excessive charges to off-airport companies affect the renting consumer as much as anyone. Initially, it reduces the customer's rental options. Two years ago, before the access fee was imposed, a traveler flying into the Quad City Airport had the choice of more than 7 rental car agencies, 4 in terminal, 3 off-airport, plus various small local dealerships. The customer could decide himself which company best served his needs. Today, unless he wishes to take a taxi to another agency, the customer is restricted to 6 companies (5 in terminal, 1 off-airport). Secondly, the consumer loses the competitive advantage when the number of rental car companies is reduced. Third, the customer's cost is increased. Rental rates of in terminal companies are higher than off-airport companies, basically because the in terminal business must pay a rent factor to the airport. As the lower priced off-airport companies retreat from the airport market, the customer must pay the greater cost.

Thrifty Car Rental was created years ago as an off-airport car rental company. We operated as such at the Quad City Airport, without intentions of moving into the terminal, until the gross receipt airport access fee threatened our survival. In February 1985, we relocated in terminal, filling the last available space for rental car agencies in our airport. Our rates have increased, not to make more money, but simply to pay the airport rent (10% revenue, $40,000. yearly minimum). Combined with Illinois CDW law, which restricts the renter's damage responsibility to a mere $200.00, the rates are higher yet. Many travellers are surprised by the rates for a rental car in Moline, Illinois.

Having operated in terminal for the past year, the gross receipt access fee levied upon off-airport companies has proved to be a safeguard for any company located within the airport terminal. As the off-airport companies fall by the wayside, unable to compete effectively in the airport market, and the number of in terminal companies is restricted by the number of counters available, any rental operation in terminal should survive by the artifical ploy of inappropriate and excessive gross receipt access fees imposed on off-airport rental car businesses.

Althoughthe access fee at the Quad City Airport now works to our advantage, I do not agree with the disproportional cost charged to the off-airport company. While it forced us into the terminal, it forced others out of the airport market, and continues to keep others from entering. Of major concern, it forces the airport customer to pay the price.

Please support S. 1822, the Fair Airport Access Assurance Act, which has a hearing before Senator Metzenbaum's Antitrust Subcommitte on 24 April 1990. Any charge imposed by the airport which is out of line with the actual services or facilities utilized, creates a manipulative, biased atmosphere which is nothing less than anticompetitive, threatens the off-airport company, protects the in terminal operator, and attacks the American consumer's pocketbook.

Please feel free to call me (1-309-762-9463) if you wish to discuss this issue further. Thank you for your fair representation. I will be in touch with you after the meeting.

Respectfully,

Tom Peters

December 1, 1989

Mr. Michael Marnach
Executive Director
Sioux Falls Regional Airport Authority
Joe Foss Field
Sioux Falls, SD 57104

Dear Mike,

For the month of November 1989, the net time and mileage charges for rentals of automobilies originating at Joe Foss Field was $9,808.09.

The 5% Car Rental Concession Fee for the month is $490.40. Our check number 1202 is enclosed.

This is our final report. Our last rental returned at 3:00PM on November 30th and our rights to the licensee expired at 12:01AM.

We operated an excellent car rental operation, but unfortunately, were unable to generate a profit during on of the 18 months of operations. First, we had to substantially underprice our competition at the airport, who had preferential access to the customer base arriving in Sioux Falls. Secondly, we had to absorb the 5% access fee, further reducing our yields.

We may have continued the effort, had space been made available to us in the terminal, which certainly could have been done in conjuntion with your current expansion and remodeling. I was not pleased when you advised that additional space in terminal would not become available until the rebid in 1992.

Sincerely yours,

Jim Greene, CTC
President

JWG/xt

Sioux Falls
A Good Thing Going
in South Dakota

Sioux Falls Regional Airport Authority
JOE FOSS FIELD
Sioux Falls, SD
605-336-0762

December 14, 1989

Mr. Jim Greene
Thrifty Car Rental
Northwestern Travel
Licensee
1600 N. Minnesota
Sioux Falls, SD 57104

Dear Jim,

I was sorry to hear of the demise of your car rental operation.

One might have anticipated a success as it was definately travel related, unlike an ice cream store or a camera shop.

I'm enclosing the last page of one of our leases that specificially states we cannot have more than four car rental operations during the term of the lease. I am sure you can understand that we would have been directly involved in a lawsuit if we had allowed a fifth at this time. I know that, as two of the on airport car rentals called me just as soon as one of your people stood around downstairs a little too long one day.

I would hope your Las Vegas Charter operation might help relieve the pain somewhat.

Sincerely,

Mike Marnach

Mike Marnach
Executive Director

MM:prw

Enclosure

Airport Administrative Office 2801 Jaycee Lane Sioux Falls, SD 57104
EQUAL OPPORTUNITY EMPLOYER